

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 14th October, 1997

The House met at 2.30 pm

[Mr. Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

Sessional Paper No.8 of 1997, the Report of the Standing Orders Committee

*(By Dr. Godana, on behalf of the Chairman
of the Standing Orders Committee)*

NOTICE OF MOTION

ADOPTION OF SESSIONAL PAPER NO.8 OF 1997

Dr. Godana: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts Sessional Paper No.8 of 1997 on the Report of the Standing Orders Committee laid on the Table of the House on 14th October, 1997.

ORAL ANSWERS TO QUESTIONS

Question No.623

DISPOSAL OF LAND BY DIRECTORS OF NGIMU FARM

Mr. Mwaura asked the Minister of State, Office of the President:-

(a) whether he is aware that the Board of Directors of Ngimu Farm Limited of P.O Box 839, Thika, have sold over 100 acres of the farm without the authority of the members;

(b) whether he is further aware that the same board is in the process of selling another 100 acres without reference to the members; and,

(c) if the answers to `a' and `b' are in the affirmative; and in order to safeguard the interest of the ordinary members of the company, whether he could direct the Provincial Administration to stop the directors from disposing off this land unless authorised by a resolution passed during an annual general meeting of the company.

The Assistant Minister, Office of the President (Mr. Awori): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the board of directors sold 40 acres and not 100 acres, of land without the consent of the members. The members have now sued the directors and the matter is currently pending in the court.

(b) I am further aware that during an annual general meeting held on the 26th October, 1996, all members unanimously agreed that the board of directors should dispose of 150 acres of land to offset a loan of Kshs43 million owed to the Kenya Planters Co-operative Union.

(c) The decision to dispose of part of the land was unanimously agreed to by the members at an annual general meeting and the issue of the provincial administration interfering does not, therefore, arise.

Mr. Mwaura: Mr. Speaker, Sir, to an extent, I am happy with the way the answer has been given, but the Assistant Minister is misleading the House. It is a fact he has agreed that the members have already sued the directors because they sold the land without the consent of the members. This position still remains the same. I am also glad the

Assistant Minister has said that they are now trying to sell another 150 acres. This farm is owned by members from various areas of Kigumo Location, Kandara, and these people have had to come from Makuyu to my constituency office every day protesting that they have not authorised the directors to sell the land. So, could the Assistant Minister help the members to ensure that the Provincial Administration, at least, convenes a meeting of the directors with the members to ensure what he is telling the House is correct? Could he do that?

Mr. Awori: Mr. Speaker, Sir, the highest organ of any company is the annual general meeting. An annual general meeting was convened legally on the 26th October, last year. While I very much want to comply and help my colleague, I do not see how I could go against the decision arrived at an annual general meeting.

Mr. Mak'Onyango: Mr. Speaker, Sir, the issue of land is an explosive one and the Government exists primarily to facilitate its people. This is a situation in which we have farmers who already have land. Now, because of some very little amount of money, their ownership of this land is threatened, when this very land could help them and their children sometime in the future. What steps is the Assistant Minister considering to help these people, because the Kshs43 million is not that much money to the Government. I am sure with some Government intervention, a way could be found by which this money could be paid to ensure that these farmers retain their land. What steps is the Assistant Minister taking to help these particular farmers retain their land and not lose it?

Mr. Awori: Mr. Speaker, Sir, the Government has no way of raising Kshs43 million to assist this organisation. There is just no way.

Mr. Mwaura: Mr. Speaker, Sir, this farm has coffee. The management has been selling coffee without telling the members how much money they have been making from the coffee sales. Some of this money should have gone towards the repayment of the Kshs43 million debt the Assistant Minister is telling the House. Could the Assistant Minister assure the House that the Government will take steps to ensure that the members are informed how much money is being raised from the coffee sales? Out of the 1,500 members, how many have agreed to the sale of the 150 acres he is talking about?

Mr. Awori: Mr. Speaker, Sir, I will direct the officers in the Provincial Administration in the area to ascertain that the coffee that has been sold from time to time, the revenue has gone into the coffers of the organisation. I will also direct that the officers ensure that if the land indeed is being sold, it is being sold at the correct market price. I will certainly ensure that all those 1,500 members are protected.

Mr. Speaker: Next Question, hon. John Munyasia!

Question No.512

OPENING OF NCPB STORES IN TAMULEGA

Mr. Sifuna, on behalf of **Mr. Munyasia**, asked the Minister for Agriculture, Livestock Development and Marketing:-

(a) whether he is aware that the National Cereals and Produce Board (NCPB) completed the construction of stores at Tamulega in Malakisi Location of Sirisia Constituency over four years ago; and,

(b) if the answer to "a" above is in the affirmative, when the stores will begin to operate.

The Minister for Agriculture, Livestock Development and marketing (Mr. D.M. Mbela): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Tamulega Depot, which was constructed by the Government, was handed over to the NCPB in 1990.

(b) The depot was handed over to the Board at the advent of grain sector liberalization, a reform measure which reduced the role of the Board in grain marketing consequently, the Board could not put the facility and a number of others in the country into use and thus, leased them out to interested parties. Tamulega Depot was, therefore, leased out in 1995 and is now under a third party for the ultimate benefit of the local community.

Mr. Speaker Sir, the NCPB is currently undergoing commercialization, and all its assets and operations are under review to ensure its future sustainability.

Mr. Sifuna: Arising from the Minister's reply, could he tell us for how much money it was leased, and who was this particular person or company that these stores were leased to.

Mr. D.M. Mbela: Mr. Speaker, Sir, the depot was leased to Surget Investments Limited for storage of cereals at Kshs 48,000. per month.

Mr. Sifuna: Arising from the Minister's reply, is he satisfied that the Kshs48,000 per month is worth the rent for that building? How much did it cost the Government or the Cereals Board to build that depot?

Mr. D.M. Mbela: Mr. Speaker, Sir, the Government spent Kshs 19, 068,366 and in my view, Kshs 48, 000 is not adequate, but bearing in mind where the property is situated you cannot get more money than that.

Mr. Busolo: Mr. Speaker, Sir, the Minister said the NCPB is undergoing commercialization. At what stage is that commercialization process?

Mr.D.M. Mbela: Mr. Speaker, Sir, we have gone quite far; the process is about to be completed. A lot of the depots which cannot be utilized by the NCPB properly in order to earn some money for themselves are actually leased out in many parts of the country.

Mr. Sifuna: Mr. Speaker, Sir, could the Minister tell the House, NCPB this building to the third party, did they advertise that tender or they just hand picked individuals?

Mr. D.M. Mbela: Mr. Speaker Sir, these tenders were advertised.

Question No.546

IMPLEMENTATION OF SIXTH
PIC REPORT RECOMMENDATIONS

Mr. Busolo asked the Minister for finance when he will implement the recommendations of the Sixth Public Investments Committee to the effect that all the officers involved in the signing of the contract for the Phase II of Rehabilitation and Expansion of Nzoia Sugar Company be investigated, charged and if found guilty, banned from holding any public office in Kenya.

The Assistant Minister for Finance (Mr. Keah): Mr. Speaker Sir, I beg to reply.

This recommendation directing that those mentioned should not hold public office, was rejected by Parliament. Indeed, the recommendation was amended and the amended version required the Attorney-General to initiate investigations with a view to prosecuting those implicated. I have conferred with the Attorney-General and he has ordered that investigations be carried out on the implicated persons. Once he gets the report of the investigations, he will decide on the appropriate course of action, depending on the recommendations of the investigating officer.

Mr. Busolo: Mr. Speaker, Sir, in the Report, we are told that the Attorney-General had already warned the Ministry of Agriculture against entering into a contract with Arkel International Inc., which is the company under investigations. Now, I do not know the other investigations that the Attorney- General wants to conduct. But be that as it may be, who are the implicated persons who are actually under investigations, currently?

(Applause)

Mr. Keah: Mr. Speaker, Sir, this Report of the Public Investment Committee did not cover only Nzoia Sugar Company because there were various other parastatals that had officers implicated, and the recommendations were similar to this one. It is in this regard that I am referring to many other names that were contained in the recommendations that were amended here in Parliament. I cannot remember the specific names of those others.

Mr. Moiben: Can the Assistant Minister inform us exactly when the Attorney-General ordered the investigations, because that exercise has taken a long time? Indeed, the Government lost a lot of money in Nzoia Sugar Company. Can he confirm exactly when this investigations were ordered!

Mr. Keah: The Attorney-General would have to be asked to give that information because I do not know.

(Loud consultations)

Mr. Sifuna: On a point of order, Mr. Speaker, Sir. Hon. Keah is trying to evade the question. We are asking about Nzoia Sugar Company. Is the Assistant Minister in order to mislead this House or to evade answering the question about Nzoia Company? We want to know the people who are being investigated in Nzoia Sugar Company.

An hon. Member: If you do not know, go and find out!

Mr. Keah: I do not know. The investigation will show who the culprits are. However, before the investigations are finalized, we cannot say it is so-and-so.

Mr. Busolo: On a point of order, Mr. Speaker, Sir. In the Report, the following persons were the people who were supposed to be investigated: Elijah Mwangale, who was then the Minister for Agriculture; Dr. K. Koinange, who was then Permanent Secretary, Ministry of Agriculture, Mr. Charles Mbindyo, who was then Permanent Secretary, Treasury; Mr. E. Wafula, who was the then Chairman of the Board; Dominic Shitemi and Francis Wabuke. Why is the Minister evading answering this question? What is he hiding? These are the people who are supposed to be

investigated. At what stage are the investigations?

Mr. Keah: Yes, I can confirm that in that recommendation on Nzoia Sugar Company, the names that he has mentioned are there. I also have those names. I was not aware about the existence of another piece of paper. Certainly, I can confirm that. We have to speak the truth here. I can confirm that the committee had recommended that Mr. E. Mwangale, Dr. W.K. Koinange, Mr. C. Mbindyo, Mr. E. Wafula, Mr. D. Shitemi and Mr. F. Wabuke, be banned from holding any public office. I am saying that this Parliament rejected the recommendation by the Public Investments Committee (PIC) and requested the Attorney-General to order investigations with a view to prosecuting those people who have been implicated. Those are the people being investigated.

Mr. Anyona: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! Order! What are you complaining about, Mr. Anyona?

Mr. Anyona: Mr. Speaker, Sir, I have a point of order on the Question that has just---

Mr. Speaker: I have come to your Question now.

Mr. Anyona: Yes, Mr. Speaker. But I had risen on a point of order on the other Question---

Mr. Speaker: We have passed that now. What was your point of Order?

Mr. Anyona: Mr. Speaker, Sir, this is a very important matter. It is a matter that involves a resolution of this House and, therefore, reflects on the effectiveness and integrity of this House. Now, given the answer we have just received from the hon. Assistant Minister for Finance, is the Chair really satisfied that we can leave this matter hanging between the Ministry of Finance and the Office of the Attorney-General? If the hon. Assistant Minister cannot go back and get an answer from the Office of the Attorney-General, would it not be right for this House to ask, through the Chair, that the Attorney-General comes to the House and gives some kind of progress report? Only that way could the Question really have been answered. Could I be in order to request that kind of indulgence?

Mr. Speaker: Mr. Keah, what is your reaction?

Mr. Keah: Mr. Speaker, Sir, I totally agree that there ought to be some kind of time frame when recommendations by this House should revert back to this House with appropriate answers. But, I am afraid, I cannot answer the question for the Attorney-General. It would be unfair for me to do so, because the investigations are being carried out by his office. I am sure that he will oblige with whatever is needed by this House in as far as the investigations are concerned.

Mr. Speaker: Mr. Anyona's Question now.

Question No.406

NON-PAYMENT OF ALLOWANCES TO
EXAMINATIONS INVIGILATORS

Mr. Anyona asked the Minister for Education:

(a) if he was aware that many teachers in Nyamira District who invigilated KCPE and KCSE examinations between 1990 and 1993 have not been paid by the Kenya National Examinations Council; and,

(b) how much money the Council owe the teachers and when the latter will be paid if the answer to "a" is in the affirmative.

Mr. Speaker: Is there anybody from the Ministry of Education? We will come back to that Question later. Next Question. Mr. Magwaga.

Question No.600

FREQUENT TRANSFERS OF AEOs IN IKOLOMANI

Mr. Magwaga asked the Minister for Education:

(a) if he is ware that frequent transfers of Assistant Education Officers (AEOs) has adversely affected educational activities in Ikolomani Constituency; and,

(b) if the answer to "a" is in the affirmative, whether he could ensure that such transfers are only made when absolutely necessary.

Mr. Speaker: Is there anybody from the Ministry of Education?

Hon. Members: They are still mourning!

Mr. Speaker: Next Question, Mr. Mak'Onyango.

Mr. Mak'Onyango: Mr. Speaker, Sir, it seems as if the Minister for Education has been sacked. That is why we do not see him in here. Otherwise, I beg to ask Question No.669.

Question No.669

GRADUATION OF MR. OWIRA

Mr. Mak'Onyango asked the Minister for Education:

(a) if he is aware that a fourth year student at Moi University, Mr. Gabriel Owira, No.BA/345/90, who qualified and was to have graduated in 1993, is yet to do so, four years later; and,

(b) if the answer to "a" is in the affirmative, what steps he is taking to ensure that the said Mr. Owira graduates and is issued with his certificate this year, given that he obliged the University as required by the same in 1996.

Mr. Speaker: Minister for Education!

Hon. Members: Sacked!

Mr. Speaker: Next Question, Dr. Lwali Oyondi.

Question No.578

DEATH OF CONDEMNED PRISONERS

Dr. Lwali-Oyondi asked the Minister for Home Affairs and National Heritage if he could inform the House how many people condemned to death have died from other causes in the last ten (10) years.

Mr. Speaker: Minister for Home Affairs and National Heritage?

Hon. Members: At home, sleeping!

Mr. Speaker: Next Question. Mr. Ruhii.

Question No.513

DEVELOPMENT OF INFRASTRUCTURE IN EASTLANDS

Mr. Ruhii asked the Minister for Local Government:-

(a) if he is aware that estates in Eastlands of Nairobi have not had their infrastructure developed and maintained by the City Council; and,

(b) if the answer to "a" above is in the affirmative, what he is doing to ensure that the Council maintains the infrastructure in these estates.

Hon. Members: You are supposed to be in the mortuary. Are you okay?

(Laughter)

The Assistant Minister for Local Government (Dr. Wameyo): Mr. Speaker, Sir, I beg to reply.

(a) It is true that the City Council of Nairobi has not been able to maintain the infrastructure of the area mentioned above satisfactorily. This, however, is due to lack of funds and not discrimination.

(b) Maintenance of infrastructure in the area will be undertaken when funds become available.

Mr. Ruhii: Mr. Speaker, Sir, although some hon. Members say that I am supposed to be in the City Mortuary, by the grace of God, I am living.

I want to say that the answer given by the Assistant Minister has not adequately answered my Question. My Question was: "Is the Minister aware that estates in Eastlands of Nairobi have been discriminated against as far as development of infrastructure and other services are concerned?" If the Assistant Minister is educated and conversant with the history of the City of Nairobi, he knows that in the colonial days, the so-called "natives" had their own estate called Eastlands area. Likewise, Europeans and Asians had their own estates each. Since the colonial days--

Mr. Speaker: You are now giving a story, Mr. Ruhii.

Mr. Ruhii: Mr. Speaker, Sir, may I ask the Minister why funds are only available to improve and maintain infrastructure in areas like Lavington, Westlands, Muthaiga, Upper Hills and other areas occupied by the elite, whereas

the money is not available for the poor Kenyans who live in Eastlands area?

Dr. Wameyo: Mr. Speaker, Sir, all those areas are under the City Council.

Mr. Mbeo: Mr. Speaker, Sir, it is indeed a very sad day because hon. Ruhiu has just explained that the same problem of Eastlands affects the whole of Nairobi. Could the Assistant Minister explain to this House what the Government intends to do in a situation where the sewerage system has broken down in the entire Eastlands? The situation is particularly bad in Mathare North where the sewer system is in a deplorable state, with waste matter shooting out into the air. The same situation occurs across the entire Eastlands, where the people we represent in this House reside. Could the Minister give any indication, if any, as to when the funds will be available and a programme set up to develop the infrastructure in Eastlands?

Dr. Wameyo: Mr. Speaker, Sir, I have already answered the question, as I said it will be done when funds become available.

Mr. Mbeo: Mr. Speaker, Sir, could the Assistant Minister say exactly when funds will be available, because we are not satisfied with his answer of "when funds will be available"? At least, there are some KANU Members in this House!

Dr. Wameyo: Mr. Speaker, Sir, when the rates are collected by the City Council and funds become available, the work will be started.

Mr. Nthenge: Mr. Speaker, Sir, can we be told of a specific plan to improve Eastlands area?

Dr. Wameyo: Mr. Speaker, Sir, I am going to discuss that matter with the officers of Nairobi City Council.

Mr. Ruhiu: Mr. Speaker, Sir, the Assistant Minister has said the Nairobi City Council will meet all the requirements as outlined in his plan for the City of Nairobi. When, according to this plan, does the Ministry intend to implement the plan?

Dr. Wameyo: Mr. Speaker, Sir, I hope I will be both in the House and the Ministry after the elections, but I have already said that it will be done when funds are available. I have also said that I am going to discuss the matter with the Nairobi City Council officers with the help of hon. Ruhiu, so that we can come to an understanding, depending on the availability of funds.

Mr. Speaker: Mr. Anyona's Question for the second time! Sorry, Mr. Ruhiu, we now move to Mr. Anyona's Question.

Mr. Anyona: Mr. Speaker, Sir, I beg to ask Question No. 406 for the second time.

Question No. 406

NON-PAYMENT OF ALLOWANCES
TO EXAMINATIONS INVIGILATORS

Mr. Anyona asked the Minister for Education:-

(a) whether he is aware that teachers in Nyamira District, who invigilated Kenya Certificate of Primary Education and Kenya Certificate of Secondary Education examinations between 1990 and 1993, have not been paid by the Kenya National Examinations Council; and,

(b) if the answer to "a" is in the affirmative, how much money the Council owes to those teachers and when they will be paid.

Mr. Speaker: For the second time, the Ministry of Education! The Ministers are not here? Yes, Mr. Anyona.

Mr. Anyona: Mr. Speaker, Sir, I do not know whether you have noticed that for the last few weeks, the Minister himself and the two Assistant Ministers have hardly been here to answer Questions. We thought, maybe, it is because they had the teachers' strike in their hands. Now, the strike is over and they are still not here. I am of the impression that given the barrage of appeals from the House last week, this Minister should resign. It is possible that the Minister is afraid to come to this House.

Mr. Speaker, Sir, would I be in order to request the Chair to declare and extend some amnesty to this Minister, so that he can come to the House to answer Questions?

(Laughter)

Mr. Speaker: Mr. Anyona, you are asking me an impossible thing. You know very well, the Chair never waged any war against either the Minister for Education or the Assistant Ministers. But if that is your request, for what it is worth, amnesty is hereby granted.

(Applause)

Question No. 600

FREQUENT TRANSFERS OF AEOs IN IKOLOMANI

Mr. Magwaga asked the Minister for Education:

- (a) if he is aware that frequent transfers of Assistant Education Officers (AEOs) has adversely affected educational activities in Ikolomani Constituency; and,
 (b) if the answer to "a" is in the affirmative, whether he could ensure that such transfers are only made when absolutely necessary.

Question No. 669

GRADUATION OF MR. OWIRA

Mr. Mak'Onyango asked the Minister for Education:

- (a) if he is aware that a fourth year student at Moi University, Mr. Gabriel Owira, No. BA/345/90, who qualified and was to have graduated in 1993, is yet to do so, four years later; and,
 (b) if the answer to "a" is in the affirmative, what steps he is taking to ensure that the said Mr. Owira graduates and is issued with his certificate this year, given that he obliged the University as required by the same in 1996.

Mr. Speaker: I suppose, I will again defer Messrs Anyona's, Magwaga's and Mak'Onyango's Questions!

(Questions deferred)

Mr. Mak'Onyango: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Yes, Mr. Mak'Onyango.

Mr. Mak'Oyango: Mr. Speaker, Sir, this Question was supposed to be asked by Private Notice; it was brought about in view of the fact that, graduation at Moi University is due any time within this month. Any delay is going to land us in a situation, where the particular person concerned is going to be greatly inconvenienced.

Mr. Speaker: What can I do? I can not answer you!

Mr. Mak'Onyango: But you have heard me, Mr. Speaker, Sir.

Mr. Speaker: Very well, Question deferred.

Dr. Lwali-Oyondi's Question, for the second time.

Question No. 578

DEATHS OF CONDEMNED PRISONERS

Dr. Lwali-Oyondi asked the Minister for Home Affairs and National Heritage if he could inform the House, how many people condemned to death have died from other causes in the last ten (10) years.

Mr. Speaker: Is the Minister for Home Affairs and National Heritage not here?
 Yes, Dr. Lwali-Oyondi?

Dr. Lwali-Oyondi: Can we know when this Question will be brought back to the House, because I lost another Question last week and I do not know when they are going to---

Mr. Speaker: Do not worry, it will come either this week or, latest, next week. It will not go beyond next week. I will defer the Question.

(Question deferred)

Mr. Speaker: Question by Private Notice, Mr. Alphonse Musyoki.

QUESTION BY PRIVATE NOTICESHORTAGE OF CLEAN WATER
IN MACHAKOS MUNICIPALITY

Mr. Musyoki: Mr. Speaker, Sir, I beg to ask the Minister for Land Reclamation, Regional and Water Development the following Question by Private Notice.

(a) If the Minister is aware that as a result of acute shortage of clean treated water in Machakos Municipality and its environs, the risk of water-borne diseases is imminent.

(b) What immediate measures the Minister is taking to ensure that, this Municipality is adequately supplied with clean piped water, to avoid any outbreak of water-borne diseases.

Mr. Ligale: Mr. Speaker, Sir, I beg your indulgence and that of the hon. Members in this House, if we could answer this Question on Thursday. It was originally sent to the Ministry of Local Government and my Ministry received it this morning. So, we are preparing an answer to it.

Mr. Musyoki: Mr. Speaker, Sir I have no objection if the Question will be put on the Order Paper of Thursday, as the Assistant Minister has requested.

Mr. Speaker: Very well, Question deferred.

(Question deferred)

POINT OF ORDER

MINISTERIAL STATEMENT ON SECURITY SOUGHT

Mr. Gitonga: On a point of order, Mr. Speaker, Sir. Last Wednesday, I raised a point of order, where I sought a Ministerial Statement on security. The Minister said that he would give an answer the following day, which he did not. The Assistant Minister, Office of the President, hon. Sunkuli, said that this would be brought up today. Do I expect the statement today? Hon. Sunkuli is here!

An Hon. Member: Mr. Sunkuli is there. He is hiding. He is not aware of what is going on.

Mr. Speaker: Next Order!

BILL*Second Reading*THE CONSTITUTION OF KENYA
REVIEW COMMISSION BILL

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to move that the Constitution of Kenya Review Commission Bill be now read a Second Time. This is the second of the three Bills arising from the Inter-Parties Parliamentary Group (IPPG) package that this House is going to debate. Mr. Speaker, Sir, we concluded the Second Reading of the Statute Law (Repeals and Miscellaneous Amendments) Bill last week. That Bill, as we said, was the most comprehensive Bill since Independence, in which many Acts of Parliament, which had and have been at the core of governance and administration from the colonial time up to now, were either repealed or substantially amended, thereby reforming the laws that apply in the key areas of this nation.

Mr. Speaker, Sir, today, it is my pleasure to move the Constitution of Kenya Review Commission Bill. Whereas the Statute Law (Repeals and Miscellaneous Amendments) Bill was the most comprehensive since Independence, it can be said that this Bill is probably the most important Bill since Independence for two reasons, among others. With the enactment of this Bill, for the first time, it will be possible to undertake the most systematic and comprehensive review of the entire Constitution since Independence.

Mr. Speaker, Sir, the Constitution is a very important document. One can even say it is almost a "sacred" document.

The famous scholar by the name of George F. Didot has stated, and I quote:

"The good or bad fortune of a nation depends on three factors: First, its Constitution; Secondly, the way its Constitution is made to work and thirdly, the respect with which the Constitution is held by the members of the Republic".

Mr. Speaker, Sir, the Constitution is, therefore, at the heart of any nation. The Constitution is the lifeblood of any nation to the extent, therefore, that this Bill will facilitate Kenya to have the Constitution that Kenyans want. It can, therefore, be said to be probably the most important Bill since Independence.

Mr. Speaker, Sir, secondly, for the first time, the people of this country will be actively involved and will be given the opportunity and the forum to really express their views on the type of the Constitution that they want and what the provisions of that Constitution ought to be. As regards the over 32 amendments to the Constitution since Independence, although they were done strictly in accordance with the provisions of the Constitution, it is also true to say that the people of this country were not actively consulted or involved directly with those amendments.

Mr. Speaker, Sir, as we, therefore, approach the next millennium, we are witnessing all over the world, a renewed interest in the Constitution and constitutionalism. Even old democracies such as the United Kingdom, France and the United States of America are questioning several aspects of their present constitutional arrangements. In the United Kingdom, for example, they are questioning the role of the monarchy in the constitutional set-up. They are questioning the status of the House of Lords. They are questioning or rather, in fact, urging to have either proportional representation or what they call alternative vote as the method of voting in new governments. Elsewhere, in the new democracies of Africa, Asia, Latin America and Eastern Europe, there is great optimism in the promises of constitutional governance. New constitutions are being drafted and old ones are being amended. This is, indeed, what one may call the era of constitutional engineering. However, we should always bear in mind that the constitution is an important document.

The Constitution, I wish to emphasise, is not made to suit particular individuals or groups of people. The Constitution, I wish to emphasise, is not made for the next general elections. It is not even made for the current generation. As Benjamin Franklin said:

"A constitution is made for posterity".

Alexander Hamilton, a famous jurist who took part and contributed effectively in the American Constituent Assembly said:

"I know not any set of men who are to derive particular advantages from this Constitution".

Therefore, to paraphrase the American statesman, a constitution is made for posterity; it is made for endless perpetual posterity. It must be a document through which succeeding generations must find stability and continuity.

Mr. Speaker, Sir, this Bill which I am now privileged to move does recognise that each and every Kenyan is a stakeholder in the constitutional review process. It is extremely important that all Kenyans must be given the opportunity to state their views and make proposals for the review of the constitution. There must be genuine popular participation directly on the part of the people themselves. We cannot be presumptuous on what the people want. We cannot stand up and say: "This is what the people want". At best, you can say: "This is what I think I want and maybe I believe a number of Kenyans want". Let us not take the people of this country for granted.

Mr. Speaker, Sir, you may recall only recently in Canada after more than 15 years of passionate debate among the leaders in Canada on the constitution that would be relevant to their country, the leaders themselves came up with proposals which they endorsed. But these proposals which the leaders had agreed on were subjected to a referendum and we know the results of that referendum. The people disagreed with their leaders hence the importance of what I am trying to say today that in any constitutional review exercise, we cannot say this is what the people want. It is the people themselves to determine whatever mechanisms to set up and say this is what we want. Therefore, that process is as important as the end product. This is the process of consulting and seeking the peoples views on the proposal that they want.

Mr. Speaker, Sir, if we are to have a Constitution which the people can call their own, if we are to have a Constitution which the people are willing to defend and here I quote another Joseph Bussory who says:

"The Constitution has been reared for immortality and posterity. It may nevertheless, perish in an hour by the falling or the negligence of its keepers who are the people".

Mr. Speaker, Sir, for example, we know that in Nigeria they put together very important and eminent lawyers who then went all over the world and came back and drafted what they called a passage constitution. But the constitution did not last for more than four years. Again, the people had not been involved in the making of that Constitution, even though it was a good one. The people will only defend the constitution if they can call it their own. They will only be able to call it their own, if they have been involved in that process of making proposals for the amendments. Therefore, if we are to have a constitution which is autochthonous, respected by people and which they are prepared to defend, then as I have said, the people must be directly involved, in the constitutional review exercise. I am glad to state that this Bill which in its Second Reading today, obeys that very cardinal principle which I will spend time later to explain that, the people must be involved in making proposals for the review of the Constitution.

Mr. Speaker, Sir, if you look at the preamble, on page 531, it states very clearly that the Constitution of Kenya Review Commission:

"Is to facilitate the collection and the collation of the views from the people of the Republic of Kenya on the proposals to alter the Constitution."

That is what the preamble says and this is the purpose of this Commission; to seek and collect the views of the people.

Mr. Speaker, Sir, on page 536, at Clause 10(b), it clearly states that:-

The functions of the Commission will be:-

"(b) To collect and collate the views of Kenyans generally on the Constitution.

(c) To carry out or cause to be carried out such studies, researches and evaluations concerning the Constitution and other constitutional systems as in the opinion of the Commission, may inform the Commission on the state of the Constitution of Kenya and make suitable alterations to it."

So, it collects views and not only does it collect views; it can carry out, among the population, studies, researches and evaluation.

Mr. Speaker, Sir, for example, I had occasion to visit Uganda to be briefed closely on what the Constitution of Uganda Review Commission did; how they approached their work. It was interesting to note that even on various issues which touch on the Constitution; on various topics and so on, they had a few questionnaires to solicit the views of the populace on them. Those questionnaires had been translated into vernacular languages of the people. They filled in and from that, they could find out what the people generally feel in a particular area or in the country as a whole on that particular topic. The whole thing was so computerised that if you wanted to know the views of the population on a topic such as: "Should we have an executive President or a ceremonial President?" You will be able to know that in Mombasa District, many people feel that we should have this type of President. You can find that out from the computer analysis arising out of the research data done by the Commission. So, in collecting the views of the people, this Commission is enabled to undertake studies and researches of this type to assess the views of the people on various aspects of the Constitution.

Mr. Speaker, Sir, on page 538, Clause 11, again there was this principle of involving the people thereby enshrined. Among the powers of the Commission, is one in which states that:

"The Commission shall without let or hinderance receive memoranda, hold public and private hearings throughout Kenya and in any other manner, collect and collate the views and opinions of Kenyans, whether resident in or outside Kenya."

So, you can see here that the Commission is being mandated that in the collection and collation of views, do not confine yourself to some particular building in Nairobi and hope that the people of this country will come there and submit their memoranda or views to you. The Commission is being mandated; in fact it is mandatory, because it says that: "The Commission shall---" They must go all over the Republic of Kenya and they must go to the grassroots and get the views of these people through such methods as I have now outlined. The people in this country will be at liberty to appear before the Commission and state their views openly.

Mr. Speaker, Sir, under part (b), which is on page 539, it states that:

"The Commission shall in such manner as it deems fit stimulate public discussions and awareness on Constitutional issues."

So, it is not just a question of research, trying to find out, but also it involves stimulating people on various ideas, maybe, even educating people on these issues. This is the way it has been approached in various countries. In country A, it is done this way, in country B in a different way, and in country C another way. Now, what do you think we should do here in Kenya so that when the people are making their contributions, they will be making them from the point of view of what they know; not of ignorance, but from what they know is being done in other countries and how that can be suitably applied to the situation in Kenya.

Mr. Speaker, Sir, as you can see, this Bill observes that very first, and fundamental principle that the people of this country must be involved. The people's involvement is also very necessary in this particular case because we have stated, under Clause 3(a), of the Bill that, what we want is a Constitution that reflects the needs and aspirations of the people of Kenya. This Commission cannot make recommendations on the reform of the Constitution which reflects the needs and aspirations of the people of Kenya, unless they are themselves consulted and involved in that process.

As I said earlier on, Mr. Speaker, Sir, this is, indeed, the age of constitutional engineering. Whereas the commitment to constitutional Government, which means a Government deriving the basis of its authority from a Constitution, appears to have received universal acceptance, there is still much debate as to how constitutionalism should capture the specific political and social peculiarities of each country. The search for the right values, the right ethos and vision that the Constitution must have or must reflect, is an ever enduring one. I am sure Prof. Mzee will agree with me. Different countries will have different approaches to this issue. That is why in various countries, we have written or unwritten constitutions and federal, confederal or unitary constitutions. We have countries with Parliamentary democracy and others where the executive and the legislative arms of the Government are linked, and

others where the three arms of Government are completely separated.

What is important, Mr. Speaker, Sir, is that at the end of the day, each society, nation or state, must within its own culture, values, morals and history find an enduring basis for constitutionalism. An autochthonous Constitution and a homegrown Constitution that reflects the needs and aspirations of the people of Kenya must, therefore, be one which is rooted in the soil of Kenya. It must be one which is consistent with our history, geographical position, ethnic diversity, economic development and within our traditions and beliefs. In order to achieve this, it is important first, that the people are involved. It is important that we have a Constitution which answers to their aspirations and needs. It is important in terms of Clause 3(b) on page 532, that we have a Constitution which exalts and enshrines good governance under the rule of law, and the dictates of human rights and democracy.

The Constitution that we are to have, Mr. Speaker, Sir, must be one, of which one can say: "Yes, it exalts, promotes and safeguards the principle of good governance. It promotes the very principle of the rule of law which includes an independent Judiciary and independent Bar. It enhances, promotes and protects human rights, and a Constitution under which democracy can flourish." So, this is the second objective. First, it must reflect the needs and aspirations of the people of Kenya as contained in Clause 3(1)(a). Secondly, under Clause 3(b), the Constitution must exalt and enshrine good governance under the rule of law, the dictates of human rights and democracy.

Mr. Speaker, Sir, we now come to Clause 3(c). The Constitution which will come out must be a Constitution that ushers Kenyans into the third millennium as a dynamic and vibrant nation. It has been said that a person or nation which has no vision perishes. We, as Kenyans, must have a vision for this country, a vision as stipulated in Clause 3(a) and (b) of this Bill. But more importantly, we must have a vision that sees Kenya as a dynamic and vibrant nation. Kenya cannot, under any circumstances, be a dynamic and vibrant nation if it is torn apart by ethnicity and tribalism. It cannot be. We know that the evils of ethnicity and tribalism have reared their ugly heads throughout Africa. They caused the loss of lives of millions of people. They have caused millions of people to be injured and destruction of property. They have caused people to be demoralised, not to think that they have any future, but to think of themselves as being sub-human. These are the evils of ethnicism and tribalism. Kenya cannot be the dynamic and vibrant nation that we want it to be, if we are torn apart by tribalism and ethnicism.

Mr. Speaker, Sir, if, therefore, we are to have a dynamic and vibrant nation, then we must know how to deal with all these negative aspects of ethnicity and tribalism. We must know how to deal with the underlying political and economic factors which give rise to ethnicity or tribalism. We must know how to discourage and eliminate the exploitation of tribalism or ethnicism for political ends. We must know how to use the positive features of tribal or ethnic culture as a source of stability and enriched life. If we are to have a vibrant and dynamic nation, then we must have an enabling environment conducive to, for example, encouraging the entrepreneurial culture and promoting the spirit of professionalism in public and private matters.

Mr. Speaker, Sir, as a professional, I can go on giving a lecture on what I mean by the spirit of professionalism, but this is not the time to do so. All I am saying is that this spirit of professionalism must be there, if we are to have a dynamic and vibrant nation. Each person must be enabled to develop his or her full potential so that, that person can place the talents and gifts that he or she may have in the service of others. We have thought too much about service to oneself without thinking of service to the others or service to the community. If we are to have a vibrant and dynamic nation, then the element of service to others also, must come into play in whatever we are doing.

Mr. Speaker, Sir, if we are to have a vibrant and dynamic nation, then we must create a conducive environment for research, innovation and discoveries in this technological era. Therefore, Clause 3 of this Bill gives us the vision of Kenya. It gives the objective for which this Constitution; the recommendations and the rest must achieve. It must achieve the days and aspirations of the people of Kenya, it must exalt good governance, the rule of law, human rights and democracy and it must do all those things that are necessary, if this nation has to be a dynamic and vibrant nation in the next millennium.

Mr. Speaker, Sir, Clause 4 of the Bill has to be read together with the proposed amendments arising out of the IPPG package. It is an important clause, in that, it deals with the composition and qualifications for appointment of the Commission. First, whereas initially it had been proposed that the Commission would be composed of 26 Commissioners, plus one *ex-officio* commissioner who is the Attorney-General - and we are proposing those amendments - the membership of the Commission is now 29 Commissioners and not 26.

Mr. Speaker, Sir, in the original Bill, we had stated that the Commission will be appointed subject to a criteria appearing in the First Schedule to the Act. In that First Schedule, we had, in fact, given a list of various organizations which will be entitled to, along with the others, in submitting names for consideration for appointment to the commission by the President. This was a subject of much debate within the IPPG and, therefore, we have come up with what appears on page 828 of the Order Paper.

Mr. Speaker, Sir, if I may briefly explain, it was found that if a list of organizations that are entitled to submit names for consideration is given, it would not be in line with observing the principle of involving everybody in the

process. I received a number of letters from very many organizations that were not appearing on the list demanding that they too appear on the list. We even went to the length of expanding the list from 26 organizations to 28, but still a number of organizations felt left out. In this important exercise, it is not good for anybody, even for a wrong or unjustified reason, to feel that they have been left out of this entire exercise. So, the IPPG, in its wisdom, felt that they should do away with the list so that literally, any person or organization can submit names for consideration. That is the purpose of what is stated there. The last paragraph on page 828 (a) reads as follows:-

"Appoint commissioners from nominations submitted to the President by---"

Prof. Mzee: On a point of order, Mr. Speaker, Sir. Is it in order for the Attorney-General to talk about the amendments which are expected during the Committee Stage when we are discussing this Bill without the amendments? Are we debating both the amendments and the Bill?

Mr. Speaker: Prof. Mzee, I am sorry you are the one who is wrong. The intended amendments to that Bill are in your Order Paper. He will bring them at the Committee Stage, but it is right that the Attorney-General introduces those amendments to the House, for the House to discuss those amendments. That is why they appear as an appendix to the Order Paper, so that Members know that the Bill will be amended and what form the amendments will take. Members must discuss the amendments now because at the Committee Stage, it will be whether or not to accept them. As a matter of policy, you will have no chance to talk about those issues at the Committee Stage. This is the right time. I urge you Prof. Mzee to read those amendments carefully and address them.

Proceed!

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

The Attorney-General (Mr. Wako): Thank you very much, Mr. Deputy Speaker, Sir. So, instead of the list, you will now notice in that paragraph that it states:-

"Appoint commissioners from nominations submitted to the President by registered political parties, religious organizations, institutional organizations, professional organizations or associations, trade unions, the business community, the farming community, women and youth organizations, associations of disabled persons and non-governmental organizations".

It is our view that, that category of lists more or less encompass each and every person. So, every person through that organization can submit names for consideration for appointment to the Commission.

Mr. Deputy Speaker, Sir, then it was realised that the names submitted will most likely be too many. In fact, we have already began receiving the names. Therefore, it was decided by the IPPG that there must be a group of at least five organizations who will help the President in scrutinising the nominations, so that he can appoint Commissioners from the lists. So, the five groups of organizations which will assist the President in evaluating and making submissions are as mentioned: Parliamentary political parties, religious organizations, the Association of Professional Societies in East Africa, to cover all the professional bodies, the Kenya Women Political Caucus, to cover all the women organizations and the Non-Governmental Organization Council established under the Non-Governmental Organizations Co-ordinating Act, to cover all the NGOs. So, everybody can nominate people and when the list is obtained, this group of five will then assist the President in making the appointments.

Mr. Deputy Speaker, Sir, the exact wording is yet to be agreed on. It is hoped that as Members contribute to the Bill, they can make their proposals for consideration, so that they can be incorporated at the Committee Stage. The words that are still under IPPG are: "In consultation", "In concurrence with" or words to that effect. What is important is that the President must have a discretion, but at the same time, the people who are nominating must know and feel that their nominations have not been in vain; that they have been considered and appointed. So, those are the two principles that will guide us in getting the exact phraseology on that particular clause. On the whole that is what had been agreed upon.

Mr. Deputy Speaker, Sir, I can assure the people that in the Commission that will be appointed, all organizations will be involved in making nominations. They will be scrutinised and after that, the President will then appoint.

Mr. Deputy Speaker, Sir, on page 829 of the Order Paper, we will see that those organizations that will be helping the President to scrutinise those various nominations and so on must, at the end of the day, be satisfied that the Commission, when it is fully appointed, has taken into account Kenya's ethnic, regional, cultural, political, social and economic diversity. The entire Commission must be seen to be reflecting the national character of Kenya. It is only when the entire Commission is seen to be reflecting the national character of Kenya that it can be trusted and be seen to make recommendations which are good, not for a particular group of people but for the entire country. So, on the

appointments, nominations will come from all organizations which have been mentioned there, which encompass all the organizations in Kenya. The President will be helped by those five organizations in scrutinising those nominations and after that, a Commission will be appointed. That Commission must reflect the national character of this country.

Mr. Deputy Speaker, Sir, whoever makes any nominations should ensure that the persons being nominated are of good character, integrity, good standing and experience in public affairs. They must be educated to a minimum of "O" Level. A person of unsound mind and who has been declared bankrupt or has been convicted of an offence and sentenced to imprisonment for a term not exceeding six months without the option of fine, shall not qualify to be nominated.

We have said that organizations will be at liberty to nominate. When a person has been appointed as a result of that nomination, he will not be sitting on that Commission to represent the organization which nominated him. It is very important for people to understand that this Commission will not be composed of representatives of various organizations who go there to pursue their own peculiar interests. Even though these organizations are involved in the nominations, once the nomination is successful and the person appointed, then sub-clause(5) says: "The Commissioner shall serve on the Commission in an individual and personal capacity." In other words, once he is a member of that Commission, then his outlook must not be to pursue the interests of any organization or section of the community. His interest must focus on what is good for the entire country. He must apply his knowledge and experience in that regard.

Mr. Deputy Speaker, Sir, Clause 5 states:

"The Chairman will be appointed from among the Commissioners by the President."

In addition to the qualifications that we have just mentioned like moral integrity, good character and so on, the Chairman must be an eminent lawyer with recognised and proven competence and learning in the field of constitutional law. We may have lawyers who are just competent in conveyancing or commercial law. We do not want those ones. We want lawyers who are recognised and known to be competent in matters relating to constitutional law. Such a person will qualify to be the Chairman of the Commission. The Vice-chairman can be any person elected by the Commissioners themselves.

Mr. Deputy Speaker, Sir, before we move on to Clause 6, I would like to say that when we are talking about the Chairman, the duties of the Chairman are set up on page 540 of the Bill, which states:

"The Chairman will supervise and direct the work of the Commission, preside over all meetings of the Commission and in his absence for any cause, the Vice-chairman shall preside. The Chairman shall also be spokesman of the Commission and in his absence, the Vice-chairman."

So, those are the duties of the Chairman and the Vice-chairman who will be appointed.

Mr. Deputy Speaker, Sir, the secretaries to the Commission are provided for in Clause 6. It states that: "The secretary of the Commission shall be appointed by the Commission and shall serve on a full-time basis." In the initial Bill, we had said that the Secretary of the Commission will be appointed by the President. However, according to the IPPG proposals, the Secretary of the Commission will be appointed by the Commission itself and will serve on a full time basis. It is also envisaged that there shall be at least, three deputy secretaries appointed by the Commission to assist the Secretary in administration, research, drafting and other duties and functions of the Commission.

Mr. Deputy Speaker, Sir, Clause 13(4) sets out the duties and functions of the Secretary. The Secretary is more or less the administrative head of the Commission, responsible for the day to day functioning of the Commission, co-ordinating the Commission's studies, research and evaluations, directing and supervising the Commission's staff, experts and consultants, keeping the records of the proceedings and, of course, writing the Commission's report.

Mr. Deputy Speaker, Sir, Clause 7 of the Bill has been amended. It says:-

"If the Commission requires the assistance of any public officer to assist it in its work, then that Commission will request the President for that assistance".

Mr. Deputy Speaker, Sir, that is the effect of the amendment to clause 7 as proposed by the IPPG.

Mr. Deputy Speaker, Sir, Clause 9 has also been amended. The effect of the amendment is that whereas under the initial Bill, all Commissioners were to be on a full time basis once appointed, the amendment now removes the full time basis for Commissioners. They will not be appointed on a full time basis. Only the secretary, the deputy secretary and the secretarial staff will be on a full time basis, but the Commissioners will not be on a full time basis.

Mr. Deputy Speaker, Sir, the effect of this is to accommodate the IPPG proposals. The experience of many people would, otherwise, not have been available to serve under the Commission, if it was on a full time basis because they are already otherwise engaged on a full time basis in the work which they are doing. But we do hope that once the Commissioners are appointed, their employers will be generous enough to allow them to devote more of their time to the work of the Commission because, as we are all aware, it has only two years to finish its work.

Mr. Deputy Speaker, Sir, there have been some criticisms to the effect that those Commissioners do not have security of tenure. The Commissioners enjoy security of tenure. Once they are appointed, they continue in that office

until this House repeals the Act. Clause 3(ii) states that:-

"The Commission shall not be dissolved except upon the repeal of this Act under section 18."

Mr. Deputy Speaker, Sir, under section 18, this House can repeal this Act after the Commission has completed its work. Therefore, for as long as this Act is in force, after the Commissioners have been appointed, they will enjoy security of tenure.

Mr. Deputy Speaker, Sir, there are various sections which deal with the resignation of Commissioners and how, if a Commissioner fails to attend eight consecutive meetings, he can be discharged. But that is only at the request of the Commission, and only if a certain procedure is followed.

Mr. Deputy Speaker, Sir, I now move on to Part III of the Bill. It deals with functions, powers and privileges of the Commission and Commissioners. I have already touched on some of those functions when I was mentioning the cardinal principle that the people themselves must directly be involved in making proposals for amendment, reform or review of the Constitution. You may recall that I touched on some of the sub-paragraphs under this Part III, particularly Clauses 10 and 11. But I just want now to refer to those paragraphs which deal with the actual functions of the Commission. The functions of the Commission shall be:-

(a) to study and review the Constitution and make proposals to alter the Constitution.

Mr. Deputy Speaker, Sir, I have already touched on (b) and "c". I will then move on to "d".

(d) without prejudice to the generality of the following---

Mr. Deputy Speaker, Sir, we then have almost eight paragraphs. The effect of all these would be that each and every aspect of the Constitution is subject to review. Under (i) we have; to examine and recommend the composition and functions of the organs of State; that is, the Executive, the Legislature and the Judiciary. Therefore, the Commission will examine their operations and aim at maximising their mutual checks and balances and, as much as possible, secure their independence.

Mr. Deputy Speaker, Sir, this Commission will examine the three important organs of State; the Executive, the Legislature and the Judiciary. A famous Constitutional theorist, Montesquie, observed that if the Legislative, the Executive and the Judiciary powers are accumulated in the same hands, then the government will act despotically. Therefore, in order to preserve political liberty, the Constitution must ensure that the Legislature, the Executive and the Judiciary are independent of each other and that there must be checks and balances between the three organs.

Mr. Deputy Speaker, Sir, earlier on, I did mention the various systems that we have all over the world: The written and the unwritten Constitution, the Parliamentary democracies, the Executive Presidencies, the Federal, the Confederal, the Juntary governments and so on. Even within these, for example, the Parliamentary democracies, there is a bit of fusion between the Executive and Parliament. In a country like America, there is a complete separation between the Executive, the Judiciary and the Legislative. Therefore, this Commission is being mandated to examine all those things, taking into account that for the preservation of the personal liberty of an individual, there must be mutual checks and balances between various organs and, that they must, as much as possible, be independent and function independently of each. This the Commission must go into.

Mr. Deputy Speaker, Sir, under (ii), we have; to examine and recommend improved means to the existing Constitutional Commissions, institutions, offices; the establishment of additional ones and so on. We have now on a long term basis, the existing constitutional Commissions. For example, we have the Electoral Commission and the Public Service Commission, which are all there under the Constitution. We are very aware that they may think of ways of making them more functional, independent and more able to achieve the objectives for which they have been set up.

It may be very well be that they may think of having other Commissions mentioned in the Constitution. There have been proposals, for example, that we must consider having the Police Service Commission because those aspects of security are also equally important to the state. There have been proposals that we must consider institutions such as the institution of the ombudsman. That should also be specifically mentioned in the Constitution.

Mr. Speaker, Sir, in other countries, we have Commissions on human rights. These are constitutional Commissions mentioned in a Constitution. So, apart from examining the existing constitutional Commissions, which are already mentioned in the current Constitution, to enable them to come up with appropriate proposals that will make them function effectively and independently, they may very well come up with recommendations for more constitutional Commissions to be provided for in the Constitution, in order to achieve the exaltations and enshrinement of good governance under the rule of law, the dictates of human rights and democracy. We have officers such as those of the Attorney-General, Controller and Auditor-General, the Commissioner of Police and others. They will consider and examine all these offices in the light of the vision, which I outlined earlier. They will do so in the light of the vision that Kenya, as a nation, must have as we go into the third millennium.

Mr. Speaker, Sir, they will have to examine and make recommendations on the Judiciary generally, and in particular, the establishment and the jurisdiction of courts, aiming at competence, accountability, efficiency, discipline and independence of the Judiciary. There are many things one can say while on this aspect, which the Commission

will be entitled to go into. Is our current structure sufficient for our purposes? It is a structure that we inherited at Independence. Is it sufficient for our purposes? The other day, a Muslim Member of Parliament was pleading that the Kadhis courts must also be mentioned in the Constitution. Should it be parallel to the existing one or not? All these are issues which this Commission will go into. The issues of delays and others which will increase the competence of the courts will be looked into. Should we have a Supreme Court of Kenya, which will be an authoritative interpreter of the Constitution and, in particular, the aspects of the Constitution which touch on the fundamental freedom and rights of the individual? In Uganda today, which is a smaller country than Kenya in terms of population, manpower and so on, they have a High Court, a Court of Appeal and, now, a Supreme Court. They are all functioning and have their own jurisdiction. They are all busy. Should we have a Supreme Court in the new set-up? Should we have a Court of Appeal? Should we have a High Court with divisions which specialise in various areas like commercial law, family law, criminal law and so on? These are the issues that the Commission must look into.

Mr. Speaker, Sir, Part (iv) is on Local Government. The Commission will examine and review the place of Local Government in the Constitutional organisation of the Republic of Kenya. This is a matter that has been of much debate for a long time in Kenya. What is the place of the Local Government in our Constitutional set-up today? The Government set up the Omamo Commission which made its report. The IPPG are also concerned with the long-term place of the Local Government in Kenya. This Commission will look into that.

Under Part (v), the whole issue of land matters, which are very sensitive and are a time bomb, will be looked into by this Commission.

Part (vi) is about examining and reviewing succession to power and recommending a suitable system for the smooth and dignified transfer of power after elections, which results in a change of Government. This Commission will look into that. We need a smooth transfer of power. Recently, we witnessed a smooth transfer of power from the Conservative Party, which had been in power for more than 19 years, to the Labour Party. In one day, it was done beautifully, smoothly, efficiently and effectively. That is one area we can look at. We can also look at the practice in the United States of America (USA), where elections take place on the 4th of November. Somebody is duly elected, but he does not take office until January, and in the interim, transfer of power and appointments are taking place. So, the Commission will have a number of examples to look at, when they will be looking into the smooth and dignified transfer of power.

Mr. Speaker, Sir, at the end of the entire exercise, this Commission is really being asked if it is necessary to come up with a new Constitution altogether, or whether it is a question of substantially amending the current Constitution and making recommendations for the consideration by Parliament.

Mr. Speaker, Sir, Clause 12 provides that the Commission will establish Committees as it may deem necessary. This, of course, is meant to facilitate the functioning of the Commission.

Under Clause 13, the Commission shall regulate its own procedure. Under Sub-Clause 4, the quorum of the Commission and any of its Committees shall be one half of the Members. It is also proposed, and this is subject to amendment, a person who is summoned by the Commission and fails to appear before the Commission shall be guilty of an offence and punishable. But now, that is out because the people must come to the Commission voluntarily. They should not be summoned. That amendment has been done so that the only people who, when summoned and fail to appear, will commit an offence, are public officers and not private persons. It was felt that public officers must be available to the Commission because the Commission may want certain information from them, which will be useful to it in the discharge of its functions.

Mr. Speaker, Sir, we then come to Part (iv) of the Bill. This may very well be the most important part of this Bill. This is because it deals with the issues on how the recommendations will be dealt with. The Commission has done its work. It has gone all over the country. It has gauged the consensus of the people on the various proposals. It is ready to make recommendations. How are they to be dealt with?

Mr. Speaker, Sir, you may recall that the Commissions which have been established in this country in the past have been subject to much criticism. This is because either they did not complete the tasks for which they were appointed, or they made recommendations which are not acted upon. We are saying that this Commission is a different one. It is appointed under an Act of Parliament with a detailed specific procedures on how those recommendations are going to be dealt with.

Once the Commission is appointed, it will more or less have a life of its own. It will be alive subject, of course, to the will of the people as expressed through Parliament, which can then pass a legislation to dissolve the Commission. That is why I said that security of tenure will be enjoyed by the Commissioners. Parliament will not repeal this Act until the procedure under Part Four has been gone into.

Mr. Speaker, Sir, Part Four has been brought in to ensure that whatever we do is done in a constitutional way. Kenya has a written Constitution and, as you know, only Parliament can alter it. There can be no residuum of power

that can effect legitimate constitutional change outside the Constitution. There can be no sphere of legality outside the constitutional order. The total sphere of legitimacy lies within, and not out of the Constitution. The Constitution can, therefore, be changed in a pre-determined manner as set out in it. Consequently, after the Commission has collected its views, its recommendations can only be considered by this National Assembly.

An hon. Member: What about a constituent assembly?

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, somebody is talking about the constituent assembly. I will preserve my comments on that because I will address it at length in my reply. I anticipate that some people will talk about a constituent assembly, but I will reply to them when replying to this debate. I will do that effectively and with a good reason.

Part 4 is on the report of the Commission and action thereon. First of all, under the initial Bill, it had been anticipated that the Commission will complete its work within two years, but was allowed to extend that period by a further 12 months if the National Assembly so decides by a Motion. But the IPPG has removed the extension by a further 12 months. Consequently, the Commission must complete its work within two years from the date of its appointment. Now there is no room for extension, unless, of course, Parliament itself amends the Act and grants it the extension. So, the Commission, once appointed, will work for two years.

Also, on the issue of appointment, I think there had been criticism that, maybe, when this House enacts the legislation, either the assent may not be given, or it will take a long time before the Commission actually does its work.

In other words, we may pass the legislation, but it may not be acted on. You may have noticed from the amendments which are on the Order Paper that it has been clearly stated that the Commission must be appointed within 60 days.

The Commission must, within the two-year period, present its report to the President, and the Bill states:

"The President shall, within 30 days of receiving the Report, transmit the Report to the Speaker of the National Assembly as it is."

So, we are now bringing back constitutionality: The issues relating to the alteration of our Constitution must be done in this House. So, the President will receive the report and immediately, within 30 days, will transmit it to the Speaker of the National Assembly. As soon as the Speaker of the National Assembly has received it, he shall forthwith refer the report to a Select Committee of not less than 50 members of the National Assembly, specially nominated by the National Assembly for the purposes of this Act. That particular Clause has been amended here because it says "not less than 50", and so the number could be 100. So, the IPPG members felt that we should just have a fixed number, and that number is 51. I believe they agreed on 51 because it is easily divisible to get two-thirds. So, the number is 51, not less and not more.

The National Assembly will have to appoint a select committee to consider the report and the recommendations of this Commission. So as soon as the Commission completes its work, the Speaker will receive its report and immediately transmit it to the Select Committee. The Select Committee will examine the Commission's report and may, if it deems it necessary, refer any matter arising from the report back to the Commission for further study, investigation or enquiry, and to report back directly to the Select Committee. That Select Committee shall itself report to the National Assembly within 90 days from the date the Speaker referred the Commission's report to it. So, once the Select Committee receives the report, it must, within 90 days, complete its task. If it wants to refer anything to the Commission, it will have to do that within 90 days. The Commission must make its report thereon directly to the Select Committee within 90 days, so that the Select Committee will be able to report back to the National Assembly within the prescribed time.

Mr. Deputy Speaker, Sir, Sub-Clause 5 says:

"The National Assembly shall consider the Commission's report and the Select Committee's recommendations thereon and shall make such resolutions thereon as shall be appropriate, including a resolution or a Bill to alter the Constitution. But such a resolution shall not be passed unless it has been supported by the vote of not less than 65 per cent of all the members of the National Assembly."

So, from the Select Committee, it will go to the National Assembly and the National Assembly, if it will concur with the recommendations of the Select Committee, will pass a resolution. We have put not less than 65 per cent because of what you see thereafter.

Once that is done then, at least this means that those recommendations will enjoy the support of this House, and the likelihood of the House passing through the necessary legislation will be high. If the resolution is just passed by a mere majority, one can never be sure that once one brings in the proper Bill, faithfully reflecting those recommendations, it will be passed. Therefore, as we are dealing with a serious matter, the 65 per cent requirement is meant to indicate the type of support that those recommendations will require in this House. The resolution passed by 65 per cent of this House will invite the Government to present to the National Assembly the necessary legislative programme that shall faithfully reflect the recommendations of the Commission as adopted by the National Assembly.

When these recommendations go to the Government, its job will be a technical one. It will be to put them in a draft form which will faithfully reflect the recommendations as contained in the resolution of the House. The Government cannot sit on that resolution. It must, within 60 days of the resolution, present to the National Assembly the relevant legislative programme including, as necessary, a Bill to alter the constitution. So, this Bill contains specific detailed proposals on how those recommendations will be dealt with, taking into account the Constitution that we have now.

Mr. Deputy Speaker, Sir, let me now come to the Commission's expenses. When you are reading about the Commission's expenses, read the initial Bill together with the amendments, as proposed by the IPPG. The expenses of the Commission including reasonable remuneration, emoluments, allowances of the Commissioners, *etcetera*, shall be charged on and issued out of the Consolidated Fund without further appropriation under this Act. The funds of the Commission shall be administered by the Permanent Secretary to the Treasury. For the avoidance of doubt, the accounts of the Commission shall be audited and reported on to the National Assembly by the Controller and Auditor-General under the Exchequer and Audit Act. We have also included the fact that this Commission can receive grants, gifts, donations and bequests movable or immovable property including such vehicles and other modes of transport and such office equipment and other accommodation as may be necessary for the efficient and effective discharge and performance of the Commission's duties and functions under this Act, provided that no grants, gifts, donations or bequests shall be granted, made, donated or accepted and received on any condition that the Commission perform any function or discharge any duty or obligation other than the functions and duties under the Act.

Mr. Deputy Speaker, Sir, we are going to have a Commission of 29 members with a secretariat, with a limited period of two years to complete its monumental task. Two years is a very short time. I know in Uganda they took more than four years to undertake the type of work that this Commission is going to do. Therefore, the financial resources must be available. The Government, of course, will give those financial resources, but we are also appealing to the donor community and others to be able to give us those donations without any conditions attached to enable this Commission to proceed with speed, so that the financial constraints should not be a factor in affecting the work of this Commission.

Mr. Deputy Speaker, Sir, the Constitution of Kenya Review Commission Bill, as I stated earlier, is a Bill which, probably, is the most important Bill passed by this Parliament, because it will facilitate the review and reform of the most important document called the Constitution of Kenya.

With those few remarks, I beg to move.

Ms. Karua: Thank you, Mr. Deputy Speaker, Sir. I rise to second the Bill. Like the Attorney-General has just remarked, this is the most important Bill that this Parliament is going to deliberate on and pass during this tenure.

Mr. Deputy Speaker, Sir, the whole object of the reform is to overhaul the laws and to get laws and a Constitution that Kenyans feel they want. The reform process was divided into two; minimum reforms and long term reforms. As far as the Constitution is concerned, we all feel that being the supreme law of the land, everybody should have a chance to have an input into the Constitution that Kenya should have. This Bill is supposed to facilitate just that, so that the public can have a channel through which they can air their views on the amendment they want of the Constitution and of the type of Constitution and Government they would want for this country.

Mr. Deputy Speaker, Sir, after the IPPG proposals were put together, a lot of Kenyans have said that they felt excluded from the process. The process of reviewing the Kenyan Constitution, as proposed by this Bill, will be all-inclusive. Those who are now complaining will have a chance of airing their views and having an input into the Constitution and into any other law that they feel ought to be reviewed.

Mr. Deputy Speaker, Sir, this Constitution of Kenya Review Commission Bill has been criticised widely. It appears to me that those criticising it did not take time to read the Bill or the proposed amendment. I do remember reading in one of the local dailies, somebody criticising this Bill, saying that this Commission will be wound up like other Commissions before it. If the critic had bothered to read the Bill, he would have seen that this particular Commission can only be dissolved by the completion of its work and by the National Assembly taking over to implement the recommendations of the Commission. This is quite clear under Section 18 and it does appear that the critic was under the misapprehension that the Commission reviewing the Constitution will be set up under the Commission of Inquiries Act. I would, therefore, like to draw to the attention of the House that this Commission cannot be disbanded as has happened to others in the past. The Commissioners and the secretaries to the Commission have security of tenure, therefore, ensuring that the Commission will be able to function and complete its work.

Mr. Deputy Speaker, Sir, it is only this National Assembly that can pass a law to repeal this Bill when it becomes law, and therefore it is only the intervention of this august House that can possibly cut short the life of the Commission. We being the elected representatives of the people, are unlikely to do this and that is why the tenure of the Commission is assured and the dissolution of the Commission cannot be done by the appointing authority, the President.

Mr. Deputy Speaker, Sir, the Bill has also been criticised with regard to the of appointment of the

Commissioners, under Clause 4. The proposed amendment to Clause 4 will take into account, and will put into effect, the criticisms that have been offered against this Bill, that the Commission will be solely appointed by the President. Clause 4 is seeking to make the appointment of the Commissioners an inclusive process. However, I would suggest a slight amendment to strengthen Clause 4.

Mr. Deputy Speaker, Sir, instead of Clause 4(3) reading "the President shall in consultation with parliamentary political parties, religious organisations..." it should read as "the President shall in concurrence with..." This will ensure that there is consensus between the President and five reputable organisations; namely the Parliamentary political parties, religious organisations, the Association of Professional Societies in East Africa, the Kenya Women Political Caucus and the Non-governmental Organizations Council established under the NGO Co-ordination Act.

Mr. Deputy Speaker, Sir, concurrence is stronger than confrontation. It places duty on both sides to consult and agree on who to appoint. We have noticed that every Kenyan is entitled to forward names of the people they propose to be appointed as Commissioners. This will bring a situation where hundreds, possibly thousands, of names will be proposed. But with the five reputable organisations, then the President will be able to go through the suggested names taking into account the rest of the provisions under Clause 5. He will also take into account ethnic, regional, cultural, political, social and economic diversity. He will then be able to consult and in concurrence with those bodies, come up with 29 Commissioners. Those who would not have been appointed as Commissioners, or those who will have forwarded names and their names will not be lucky enough to be among the Commissioners named will not have lost anything, as they will be able to forward their views to the Commission. We must recognize that we all cannot be Commissioners and the people we would want appointed cannot also be appointed as there will be only 29 Commissioners.

Therefore, the process is inclusive; Kenyans now have a chance to select a Commission of their own. It was previously felt that, the Commission will exclusively be a Presidential Commission, but the proposed amendments to this Bill now will ensure that it is a Commission which belongs to Kenyans, Kenyans will again have a chance to offer their views the Commission. I, therefore, emphasise that the process is all inclusive, and the criticism levelled against this Bill have been taken care of under the proposed amendments.

Another criticism levelled against the Bill is that the Commission can be prolonged indefinitely. This was so before the proposed amendments to Clause 16, where this National Assembly could have been able to extend the life of the Commission by 12 months at a go; meaning that after the expiry of the first 12 months this National Assembly could have again given the Commission another 12 months, making it an indefinite process. With the proposed amendments, the Commission will have to complete its work within 24 months. Thereafter, the Bill has an elaborate mechanism of how the recommendation will be implemented up to the stage where this Parliament will pass either a Bill to alter the Constitution or any other Bill that the Commission will have recommended. The way the proposed amendments have been proposed means that within 36 months of the appointment of the Commission, Kenyans will have completed the process of reviewing the Constitution.

I think this is a very satisfactory state of affairs. It means that we will not have to wait again until the elections are round the corner to start reviewing our laws. It means that after we will have been through with the process, and there will be time for implementation before the general election, after this coming one. I think that this Bill represents aspirations of Kenyans in that we do not want to ever again have to rush to amend laws just because elections are round the corner, when temperatures are likely to rise, and confrontations are likely to be the order of the day. We want to have enough time to be able to make changes to our laws without having to be rushed.

Mr. Deputy Speaker, Sir, there have been---

Mr. Gatabaki: Mr. Deputy Speaker, Sir---

Mr. Deputy Speaker: What is it? You cannot just stand up and say, "Mr. Speaker". I have not given you the Floor, Mr. Gatabaki. what is it? Are you on a point of order?

Mr. Gatabaki: Yes, I am on a point of order!

Mr. Deputy Speaker: If you want to raise a point of order, you should say: "On a point of order---". You cannot just stand up and say, "Mr. Speaker".

Mr. Gatabaki: Mr. Deputy Speaker, Sir, why should you harass me when I am on a point of order?

Mr. Deputy Speaker: I am not harassing you. I did not hear you say, "On a point of order"

Mr. Gatabaki: I am not even given time to ask my questions. Mr. Deputy Speaker, Sir, I desire to be listened to. Either I am given a chance to raise a point of order or I am not.

Mr. Deputy Speaker: Order, Order! Mr. Gatabaki! I can assure you, Mr. Gatabaki, that every Member of this House will, within the Standing Orders of the House, be given an opportunity to raise an appropriate point of order. If you have a point of order, you should stand up and say, "On a point of order, Mr. Speaker, Sir". But if you just stand up, and say "Mr. Speaker" without having told me that you have a point of order to raise, I am afraid, I am bound

to allow the hon. Member on the floor to continue. I will not recognize you. Now that you have said that you have a point of order, I allow you. What is your point of order!?

Mr. Gatabaki: Mr. Speaker, Sir, I cannot understand why this House is in such hurry to pass these fundamental issues that will affect this nation for years to come. So, when a Member of the Opposition, who was not part of this Inter-Parties Parliamentary Group (IPPG), stands up, he deserves to be listened to.

Now, my point of order is this: The hon. Gracious Lady is speaking about three years, within which this Commission will have done that. Is she not misleading this House, knowing very well about the history of Commissions? She knows that the Head of State can, at a stroke of a pen abolish a Commission.

Ms. Karua: Mr. Speaker, Sir, I will repeat what I said earlier that criticism against this Bill is borne out of ignorance.

(Laughter)

This is not a Commission being set under the Commissions of Enquiry Act, where the President can appoint and revoke. This is a Commission seeking to be set up by an Act of Parliament, which this Parliament is being asked to pass. That means that once the Commission is appointed, it can only come to an end as prescribed by this Bill. I, therefore, expect any Member with misgivings as to how the Commission will operate to contribute and give us ways and means of strengthening the Bill.

To continue with my contribution, I was saying that the Bill sets up the mechanism for implementing the recommendations of the Constitution of Kenya Review Commission, up to the compression stage. Like I had just stated, it will ensure that we do not have to once again rush when elections are around the corner or when we do not have sufficient time, to review our Constitution or any of our laws. It is also hoped that with the spirit of IPPG, the coming Parliament - the eighth Parliament - will continue with the process of reviewing our laws by setting up suitable committees. This Commission is going to help Parliament by collecting the views from the public, as opposed to this Parliament discussing amendments to the Constitution without entertaining the views of the Public.

A lot of people have criticised the IPPG package, which includes this Constitution of Kenya Review Commission Bill, by saying that we did not interfere with the powers of the President or the Executive. The amendments that were agreed upon by the IPPG were short term. This Bill will facilitate the examination by Kenyans, of the powers of the Executive, the President, and it will be up to Kenyans to suggest what powers should be exercised by the President and what powers should be subjected to a Parliamentary committee for vetting. Kenyans will even have a chance to suggest, in what manner constitutional appointments should be made.

For a long time, lawyers in this country, and I happen to be one of them, have been complaining that they are not fully involved in the appointments of members of the Judiciary. It will now be our chance to bring up suggestions, on how the professional body of lawyers can be involved in the appointments of members of the Judiciary to strengthen the administration of law.

Mr. Deputy Speaker, Sir, the tenure of the Chief Justice (CJ) is coming to an end. Already, suggestions are being made, and people are canvassing behind the scenes on who should be the next CJ. It is hoped that when this Bill becomes law, we shall have an elaborate system of appointment, not only of High Court judges, but also of the CJ under a proper criteria so that we do not feel that any one of the Kenyan communities is being favoured for the CJ position. Currently, it is being felt that Kenyans of Asian origin, who comprise less than 1 per cent of those in the legal profession, have had too many CJs. We remember with appreciation, the late Chief Justice C.B. Madan, a legal luminary in this country. After that we had a foreign CJ - Justice Kwasi Apaloo. After Apaloo we had another Kenyan of Asian origin, who is still the CJ, Justice Cockar.

Mr. Deputy Speaker, Sir, since the legal profession comprises members of all communities in Kenya, it would make other Kenyans feel that the appointing authorities are, perhaps, looking for only Kenyans of a certain community if we were to have another Asian CJ. Not that the Asians are not Kenyans, but the appointment should reflect the composition of members of the legal profession in this country. Nobody can correctly claim that the best brain of integrity is only found in one community in Kenya.

Therefore, Mr. Deputy Speaker, Sir, those who feel that the appointments have been wanting will have a chance, when this Bill becomes law, to suggest ways in which we could strengthen appointments of the CJ, judges of the High Court, judges of the Court of Appeal, and any alterations we would want made in the judicial system, so that we can feel it is truly representative of this society, and also so that it will have the respect of everybody on this land.

Mr. Deputy Speaker, Sir, all those who have felt that the powers of the executive arm of the Government are too concentrated will now have a chance of suggesting ways in which we can trim them. It is desirable in any democracy to have a vetting system of constitutional appointments by a Parliamentary Committee, or by other acceptable committees. We will now have a chance, not only to suggest, but to also implement, some of these

suggestions once they become acceptable to all Kenyans. The purpose of reviewing the Constitution of Kenya is not to overthrow the incumbent government. A law is never, and ought never to be passed for the purpose of dislodging those in power or a particular person. We should enact laws that serve this country for posterity. Laws should facilitate Kenyans to hire and fire governments, and that is our responsibility. I think that this Bill will be enabling Kenyans to amend the Constitution and all laws that they feel will make Kenya a truly democratic State.

Mr. Deputy Speaker, Sir, some of us feel that this country should have a fixed election date. These are all suggestions which can come when the Constitution of Kenya Review Commission Bill becomes law. We will have an opportunity to either suggest a Parliamentary system, or a Presidential system where Presidential Elections are not necessarily pegged to the Parliamentary Elections.

Mr. Deputy Speaker, Sir, some of us feel that women have been discriminated against on issues of citizenship, where the male members of the Kenyan society can confer citizenship to their spouses while female members cannot do the same. These are issues we hope to address through this Bill. These are issues for which we hope to lobby for an amendment of the Constitution, to reflect the aspiration of Kenyans.

For those of us who feel that there is gender imbalance in governance, and that we need reserved seats for women, it will be our chance to present the views which this House rejected earlier on this year, to the Constitution of Kenya Review Commission. We hope that since women form the majority in this country, at that time we shall have a good basis of having our sentiments carried as recommendations of the Commission. In a nutshell, I am saying that all those suggestions and ideas Kenyans have heard from people on which course this country should take, shall have a chance of being put into effect when this Bill becomes law.

Mr. Deputy Speaker, Sir, one other very vital proposed amendment to this Bill is the removal, or rather the amendment, of the clause empowering the Commission to summon and compel any person to appear before it. The constitutional review process should not be a forced one. Kenyans should voluntarily give their views without being compelled. Therefore, the proposed amendment that says only public officers can be compelled to either give evidence or to produce records is very welcome, so that no Kenyan is harassed to give views unless he or she voluntarily wants to do so.

Mr. Deputy Speaker, Sir, this Bill, with the proposed amendments, will help Kenyans shape the Constitution in the fashion they want. It has been suggested that only a constituent assembly can usher in a Constitution that can take Kenya into the next millennium. Our neighbours in Uganda had a Constituent Assembly, but their background was totally different from ours. They had come from a war; they had no elected representatives because they had appointed persons in the National Assembly and, therefore, they needed that Constituent Assembly which was elected to enact a new Constitution. In Kenya, we have a Constitution which is still operating; we have a Constitutional order, and so, it will not be necessary to have a constituent assembly.

All we need is a Commission to take the proposals from Kenyans, which will then be debated by this Parliament and enacted into Laws. Parliament will be the final forum where the recommendations of Kenyans will be enacted into law. This system has served us quite well; it has failed us in some respect, but it is us who have failed to make the system work. It is, therefore, our determination that will make the review process work. Let us not confuse our own short-comings with the weaknesses of the system.

Therefore, all those who are interested to see Kenya having a new Constitution, that truly represents the aspirations of Kenyans, should support this Bill. I would like to suggest a further strengthening of Clause 17, which deals with the funds of the Commission. I note that the proposed amendment brings the Permanent Secretary in the Treasury into the management of the Commission's funds. I would like to suggest that it be put clearly that the remuneration of members of the Commission and its staff should be determined in consultation with the Permanent Secretary in the Treasury. This will mean that the Commissioners do not get unrealistic salaries, beyond what Kenyans can afford. It means that there would be a check and balance between the Treasury and Commissioners before fixing their remuneration.

Otherwise, the process of managing the funds satisfactorily is offered by this Bill. Those who doubt the intentions of this Bill should carefully read the Memorandum of Objects and Reasons, and after they read the proposed amendments, they will have very little option but to support it.

With those few remarks, I beg to second.

(Question proposed)

[Mr. Deputy Speaker left the Chair]

*[The Temporary Deputy Speaker
(Mr. Wetangula) took the Chair]*

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Thank you very much, Mr. Temporary Deputy Speaker, Sir. I want to plead with the Members who have stood up with me. I am going to spend very little time on this Bill. I feel that this Bill is a very important document, in terms of assuring Kenyans of three very fundamental objectives. The first one is that once this Bill is enacted into an Act of Parliament, and a Commission set up as laid out in this Bill, that Commission will be able to offer Kenyans from all walks of life, the opportunity to express their views. Whether they are represented in the various bodies which are contained in the Bill or not, public meetings or hearings will be held throughout the country to enable them air their views on how they would want our country to be governed in the future.

The next thing, which I believe is also very important, is the fact that, once the Commission is set up by an Act of Parliament, there is no way any future Government that will have been elected as a result of the forthcoming elections, can renege on that one. It is, therefore, only this Parliament which can revoke that Act or repeal it. This point here is an extremely important one, because there was a great deal of scepticism, when the idea of setting up a Commission was first floated. The sceptics had the following to say: "If the Commission is set up to review the whole Constitution, what guarantee is there that if the Government won, it will not turn back and say it will not implement the work on the Constitution and close it up?" I am happy that hon. Martha Karua has made it quite clear that this is a very special Commission. It is a Commission that is to be established by an Act of Parliament and that was why it was established. No single person can, therefore, come and revoke it. I hope, therefore, that the sceptics will take solace in the fact that, this Bill is established by an Act of Parliament. Once it starts its work, it is going to continue with the exercise and subsequently bring a report before the House. That is the main reason for bringing this particular Bill to this Parliament. That is the objective to be achieved by this Bill, which is important. Well, one could always argue from a purely sceptical or cynical point of view: "Well, the Commission will be set up; it will do its work; it will then make its own report, but the report will be put into a shelf and be left there". I have no intention of going into what some Members are saying; they should respect the Chair.

The mechanism has already been articulated clearly; one, that the Commission has got only a specific lifespan and no more, unless this Parliament then decides to give it an extension. I have no doubt at all, that Parliament will be very grudging in giving an extension. It will have to know the reason or whatever it is. Maybe, the only reason I can foresee is if there was a war in this country. Maybe, if there was war, then it can be difficult for the Commission to go all over the country and be able to hold public meetings and listen to the people. But I do not see the possibility of a war taking place in this country. Therefore, what will happen is that the Commission must submit its report within a given period of time, at least, within two years. And if there is any extension, it has got to come from this House. The Commission cannot extend its own lifespan whatsoever! So, the work must be done, and those who are going to be appointed to serve on the Commission will know, right from the beginning, that their time is limited and they have to do their work.

Dr. Lwali-Oyondi: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am hearing the Vice-President and Minister for Planning and National Development loud and clear in his assurance, but while taking this opportunity, would it be in order for him to tell us exactly why his Commission, the Saitoti Commission, disappeared into the air?

Mr. Temporary Deputy Speaker (Mr. Wetangula): We finished Question Time at 3.30 p.m. Carry on, Vice-President!

(Laughter)

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, for the benefit of the hon. Member, since I had the privilege of officiating that Commission, I do not believe, and I will not go into the grave believing, that the Commission that I chaired had nothing to offer to this country. There were a number of fundamental recommendations and a number of those recommendations were actually implemented. The pluralism that we do have in this country was well-articulated and recommended in the report. I want to make it quite clear that, that was a fundamental thing.

Mr. Temporary Deputy Speaker, Sir, the tenure of security in the office of the Attorney-General, Judiciary, and Auditor-General's office was, again, as a result of the Committee that I chaired. There are quite a number of things, and I also want to tell the hon. Member and sceptics that, as in the case of the Inter-Parties Parliamentary Group (IPPG), the Saitoti Report also saved this country from being plunged into chaos.

Mr. Temporary Deputy Speaker, Sir, I have said earlier that the Commission will have to submit a report within a certain period of time, and there is no way it can extend its time. The second thing for which the IPPG is extremely involved, but it is laid right here, is that the Commission, once it produces its report, will submit the report to the President and Government for that matter. This will ensure that the Government of the day studies the report

thoroughly, checks everything properly, and sees whether there is any kind of contradiction; but, of course, the most important thing is that the Government cannot alter the report.

Mr. Temporary Deputy Speaker, Sir, the only thing that will be done is that within a certain given time and, I think, as it has already been stated in this Bill, within 60 days, the President will then transmit the report of the Commission to the Speaker of the National Assembly. That again is law. Once we pass this Bill here, it is going to be law. There is no way that once the report is received it will can be shelved. If that is done, the Government itself will be bound within the law and that is something that we do not intend to do. Once the report is submitted to the Speaker of the National Assembly, then in the law it is very clear that the Speaker of the National Assembly will bring this thing to the attention of the National Assembly. The National Assembly will then appoint a committee which will then thoroughly examine the report. The National Assembly will find whether there are certain areas that need to be strengthened. It might very well find out that there are certain aspects of the report that cannot be implemented or certain aspects, for that matter, which may be erroneous or misleading. Nevertheless, it cannot, therefore, reject them.

Mr. Temporary Deputy Speaker, Sir, we should understand this again as being completely different from the work of other committees which can look at the document, examine it and then come to the National Assembly and say that "we have rejected this Report". The Committee of the House cannot reject that report. It will not have a mandate to do so as contained here in the Bill and I do not think that we should move any amendment to empower such a Committee to reject the Commission's report. The thing that it can do is that it can seek views. Maybe it can ask for investigations which is also contained here in the Bill. It can also seek further information and then within a given time submit a report to the National Assembly and the time limit for doing so is set. The same National Assembly will go thoroughly through the whole report and it is this National Assembly itself that will then pass a resolution indicating the reports desirability and its approval thereby indicating indeed, that the Constitution of Kenya should be looked into. The Report will then be submitted once again to the President and to the Government and, I think, as indicated clearly here, there is a time limit of 60 days within which of course, the Government itself will prepare the necessary legislation to be introduced here into the National Assembly for the Report to be debated as the Constitution.

Mr. Temporary Deputy Speaker, Sir, what I am really saying here is that there are really three things that I think are really important pillars for the whole reform and democratisation process. One, is the fact that the implementation process is fairly clear and it does not leave room for anybody for that matter, or even Parliament, to renege on the implementation. It is clear that it is going to be implemented and there is a time frame already set. But what I see as being more important is the fact that once the Commission is set, it cannot be tampered with and it has got the security of tenure. It is all-inclusive and I know the words "all inclusive" have been a gimmick, I think, of the NCEC. I think they are looking for a mechanism which is fairly more inclusive. I cannot see anything that is going to be more inclusive than this. It offers a framework and the opportunity for Kenyans to work on it.

Mr. Temporary Deputy Speaker, Sir, change has been a dynamic process in the history of Kenya in the last 34 years and I believe that Kenyans have also come to accept the fact that whenever there are problems, we have to solve them through consensus and not through confrontation. Kenyans have also come to accept that change is inevitable and it is part of our own political body. What we are doing to achieve in this Bill is to elongate that particular process of solving difficulties that we may have. I know there are those who wanted the Constitution to be overhauled immediately, but the question is the timing and that is what is being discussed here. We have to make a recognition that to do justice to the Kenyan people, it is important to ensure that there is sufficient time given to the Commission so that it can seek the views of all Kenyans because that exercise is both difficult and delicate.

We do not want an overhaul of the Constitution overnight. The Constitution requires an extremely broader structure. It is the one that holds this country together and we do not want to overhaul the Constitution today and then tomorrow once again we are in the street saying that we do want reforms. I think we have had enough--- At the time when we have a problem, we look at certain aspects of the Constitution depending on whether that aspect is a provision of the Constitution that is going to assist me to win or not to win. I, therefore, accept it in terms of being shortsighted. I look at a very short period. If I amend this particular Constitution, how is that going to affect my chances in winning the next elections? If it does, then I say "yes". If I think that it is going to jeopardise my chance in the next elections, then I say no. Unfortunately, that is not the way to lay down important institutional structures. Institutional structures should be laid down with foresight with the true understanding. Today, they may not appear to be all that good to me, but they are there to remain for posterity and this is what this particular Bill seeks to do. Mainly we do have a certain period between now and the next elections. It is undeniable that after every five years, we must have an election. It is contained in the Constitution. It is another thing to say that even though we do have a Constitution for five years, we can still prolong our period here through our resolution for a true amendment of the Constitution so that we look into these things.

Mr. Temporary Deputy Speaker, Sir, I want to say this. I think that the most dangerous thing that we Parliamentarians can do is to come and pass the resolution here and make sure that we extend our period here under the

guise that we are going to carry out a thorough review of the Constitution. I personally believe that if we ever did that, Kenyans themselves would come and put us out.

Dr. Lwali-Oyondi: On a point of information, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Wetangula): Do you want Dr. Lwali-Oyondi's information?

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Let him come and give his information.

Dr. Lwali-Oyondi: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to inform the Vice-President and Minister for Planning and National Development that, it was Kenyans at Limuru, who recommended that, if need be, these minimal constitutional, statutory and administrative reforms should be given a period of effect; a period during which those who were denied the enjoyment of the freedom of association can have it and thereby effect fair and free elections. In fact, they had suggested a period of one year or six months, and this was agreed on by NCEC. Therefore, Kenyans are not all worried about the five year period. Secondly, we had a precedent in 1966, when the Senate was dissolved and there was an additional two years for that transitional period.

Thank you.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I thank the hon. Member for that information. But I think he should know that I am literate enough to have read the resolution of the Limuru meetings. I was offering my own view and I believe that I am right in my own view that, if indeed, we sat here and passed a resolution to extend our period, as I said, under the guise to re-look at all matters within a short period of time, I can tell you for sure that, I believe it personally--- You may think otherwise, everybody is entitled to that. It is a purely democratic thing to believe in that one. I believe that Kenyans, especially the electorate, who are today expecting elections to come as by that time, they will be ones to come and say that we have abused our own power in this Parliament.

Mr. Temporary Deputy Speaker, Sir, let me also remind every Member here that, there is no single hon. Member here who does not have a shadow Member of Parliament in his own constituency. Each one of us has an individual in his own constituency who, from the day we were elected, has set up preparing to ensure that he removes us. That person has been working hard and he has got people ready to elect him and he will not want us to extend our period here, even for a single day.

The example that has always been flashed all through, the 1960s, I personally believe is a fallacy because it failed to take into account the of the major social and economic changes that have taken place in this country. The Kenyans of those days are not the Kenyans of today. The Kenyans of today are extremely enlightened and the hon. Member who calls himself a professor should know that the Kenyans of today are very rich in the mind.

An hon. Member: And very poor in their pockets!

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Let me tell you that, they are Kenyans who know their rights and there is no way that they are going to allow any one of us to take away their rights. The 1960s and these days are completely different.

Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. Ni haki kwa Makamu wa Rais kusema kwamba watu wa sasa ni tofuati sana na watu wa zamani, ilhali tulipokuwa kule Limuru, ni hawa hawa watu--- KANU haikuja, lakini wote walikuja; watu wa dini na kila mtu. Hata chokora walikuwa huko.

An hon. Member: Even the unemployed!

Mr. Shikuku: Yes, everybody was there.

Prof. Mzee: And they recommended.

Mr. Shikuku: Na wao ndio waliosema kwamba ikiwa ni lazima, Bunge hili liongeze muda ili yale mabadiliko yaweze kuonekana kwamba ni sawa. Hawa ni wa sasa waliopendekeza hivyo juzi katika mkutano wa Limuru. Haikuwa miaka ya 1960s.

Bw. Naibu Spika wa Muda, pia ningependa kumfahamisha kwamba juzi nilikuwa huko Mombasa katika FORD(A) executive committee, katika ukumbi wa Tononoka. Nilimwona ofisa wa polisi akija na kuniambia: "Je, una habari, Bwana, kwamba umepitisha dakika mbili zaidi?" Nilimwambia kwamba nina habari na nikamuuliza: "Lakini wewe ni nani?" Aliniambia kwamba yeye alikuwa OCS wa Makupa Police Station. Nilimwambia kwamba hata kama yeye angekuwa ni OCS wa Kenya, ile ilikuwa ni kamati ya chama ambayo haihitajiki kuwa na leseni na hakuna haja hata ya kumjilisha. Nilimwambia kwamba: "hapa tukikaa katika ukumbi wa Tononoka, tukizidi zile saa ambazo tumeagana, tutalipa pesa kwa mwenye hall, sio wewe ofisa wa polisi, ondoka hapa." Kwa hivyo, haya mambo tunayopitisha hapa, hayajawafikia, na huo muda unahitajika na ulipendekezwa na watu wa Limuru.

The Temporary Deputy Speaker (Mr. Wetangula): Hon. Shikuku, you are now pursuing an argument!

Mr. Shikuku: La! Ninamjulisha kwa sababu ilikuwa juzi huko Limuru; haikuwa mwaka wa 1966 au 1960. Ilipendekezwa kwamba, ikiwezekana, huo muda uongezwe.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Nafikiri, Bw. Naibu Spika wa Muda, nikimjibu mhe. Shikuku---

An hon. Member: No! Ulianza kwa Kiingereza!

The Temporary Deputy Speaker (Mr. Wetangula): You cannot change mid-stream.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): It is because he gave his information in Kiswahili, and I wanted to show that I also know Kiswahili. This is because the hon. Member likes to speak in Kiswahili.

Mr. Temporary Deputy Speaker, Sir, leaving that aside---

Prof. Ouma: On a point of order, Mr. Temporary Deputy Speaker, Sir. I thought I heard my fellow Professor say that the people of Kenya today are very rich, and, they are not like the people of the 1960s. Is the Professor in order to imply that the people of the 1960s were bankrupt upstairs?

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I think I would rather continue and ignore that point.

An hon. Member: Yes, he is a Professor!

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, there is another important area that I want to touch on before I actually allow other Members to speak. This is what I want to say: There have been many who have said that maybe the best way of doing what we are proposing to be done by the Commission should have been done very well through the National Convention or through the constitutional assembly. These are cliches we have heard.

Mr. Temporary Deputy Speaker, Sir, I want to strengthen the point which has just been made by hon. Karua. A national convention which, of course, goes together with a constitutional assembly, have normally been established where you do not have a constitutional government in place. Those conventions were basically held in the former Francophone countries where normally what we had were dictatorships or military governments. There were no national assemblies whatsoever. There was no constitution in place. So, in the absence of a national assembly, then you ended up having a big and an amorphous body called "the convention" which could, therefore, come up and set up a constituent assembly to examine the various laws and work out a constitution. That was the position in the case of Uganda because we all know that the constitutional government had been overthrown a long time ago. What we had then at the time of setting up a constituent assembly to draw up a constitution was a coup *detat*; or whatever to overthrow the government. Here in this country, whatever shortcomings we may have had, the truth of the matter is that we have had a constitutional order in place. If, indeed, there are certain imperfections within our own constitutional order, then we need to formulate within, our own constitution, mechanisms as we are doing now to be able to put things in place. This is the best way of doing it.

Mr. Temporary Deputy Speaker, Sir, finally, we should all be fairly broad-minded in the sense that democracy is a process in which you listen to the views of the other side and the other side also listens to your views and then you agree on a resolution in a much more peaceful manner. What we do not want in this country at this particular time, is to destroy the peace, plunging this country into chaos, in a purely idealistic belief that maybe something better is going to emerge. It will not emerge.

May I remind those who believed what Mao Tse-tung said in one of his famous quotations because we had to read them. He says, "Making a revolution is not the same as having a tea-party.". That was one of the foremost revolutionaries making an important statement in one of his quotations. What does that mean? The revolutionary jargon sounds extremely good. It is good to say, "Let us carry out a revolution. Let us overhaul the system and let us go into the streets". The truth of the matter is that doing that entails bloodshed, destruction of property and what we may have built for the last 34 years. It entails destroying the future of the youth of this nation. I do not think we want to do that in Kenya. I do not think that we have exhausted all the mechanism for dialogue. Today, and I want say here, I think the language of resolving problems in Kenya is dialogue. It is not confrontation. We do not want confrontation. We want to be in a position where we can listen to each other. Whatever views we may have, we want to listen to each other. Let us sit down and resolve all our problems through dialogue. It should not be through vilification, destruction of property or violence.

Finally, people think that the IPPG package was a deal and I know there is one hon. Member who said it was a deal. There is no deal which was arrived at. The IPPG package was as a result of exhaustive dialogue by Kenyans who are truly dedicated to the welfare of this nation, who want to ensure that every Kenyan will continue to enjoy his freedom and his democratic rights and by Kenyans who also believe in the future of this country. When we all went into the IPPG discussions, not all people believed in the same thing, people offered their views from their own point of view. There were extreme views that I think, in a true democratic belief, were discussed and agreed upon through a principle of give and take. The IPPG package was the best package we could offer to the Kenyans. It is extremely sad to hear some hon. Members out there insulting the hon. Members who spent many hours on the IPPG discussions. I

do not think they have come out with anything other than abuses and insults. I do not think they have offered anything.

Indeed, we want to tell them, again through the principle of forgiveness and the philosophy of all inclusive, to join us so that we can build Kenya. We do not want to assume their abusive and insulting language. On the contrary, we believe that we are taking a fairly civilised position and we are ready to welcome them to our train because we want a package which is all inclusive. I know my good friend, hon. Muite, is an intelligent man and I am sure he is going to join us any time. He may not have abused us, but I believe that as a result of this, hon. Muite is going to embrace the IPPG package. I am sure he is going to do so because his own constituents have embraced the IPPG package.

(Applause)

Mr. Temporary Deputy Speaker, Sir, it will not take very long before the hon. Members who are against the IPPG package---

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member for Kajiado North to say that the people of Kikuyu Constituency have embraced the IPPG package when his own mother-in-law, whom I represent, has rejected the IPPG package?

(Laughter)

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I did say that the hon. Members who are against the IPPG spirit, if they do not know, the people have already left them. Hon. Muite's constituency happens to share a boundary with my constituency and I know his constituents very well as much I agree that my wife came from there. But just to demonstrate how outdated these Members are, my mother-in-law passed away a long time ago.

Mr. Temporary Deputy Speaker, Sir, I beg to support.

(Laughter)

Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. I think this is a very serious matter taking into account the fact that whatever we say here is recorded verbatim in the HANSARD. I heard the hon. Muite allege that he represents the mother-in-law of the Vice-President and Minister for Planning and National Development, but the Vice-President and Minister for Planning and National Development has told us that his mother-in-law passed away a long time ago. Was the hon. Member for Kikuyu misleading the House, or is it the Vice-President and Minister for Planning and National Development who is misleading the House?

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, what I said is true.

The Temporary Deputy Speaker (Mr. Wetangula): Order! Order! I am sure the Vice-President and Minister for Planning and National Development is better placed to know his mother-in-law than hon. Muite!

Dr. Kituyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Chair to suggest that the Vice-President and Minister for Planning and National Development would know his mother-in-law better than the person who represents her when by the customs, you are not supposed to look at your mother-in-law? Maybe he does not know her because he does not look at her.

(Laughter)

Prof. Mzee: Thank you very much, Mr. Temporary Deputy Speaker, Sir. On the outset, so that it is clear to everybody, I was not party to the IPPG group.

Hon. Members: Why?

Prof. Mzee: I opposed it right from the beginning. I had thought that, probably, there would come a time when I would congratulate the IPPG for their work, but the chances now look very slim. The reason why I never supported the IPPG talks is because I do not trust this Government, KANU itself and the President, because of their continuous activities of sabotaging the Opposition all the time. Mr. Temporary Deputy Speaker, Sir, this particular Bill is here to buy time for President Moi. There is no other reason why this Bill is tabled in this House except to buy time. I will demonstrate this fact by going through the Bill word for word. KANU and President Moi will do nothing which will jeopardise their chances of winning the 1997 General Elections.

Mr. Temporary Deputy Speaker, Sir, I must emphasise that this country is well known for forming task forces whose results are never known.

An hon. Member: Can you prove that?

Prof. Mzee: I am going to prove! Do not be in a hurry!

Mr. Temporary Deputy Speaker, Sir, this country is well known for forming task forces and Commissions of inquiries when they are faced with a problem and they want to get out of the problem for that moment. We have been subjected to this by non other than the Attorney-General. The Attorney-General's way of solving problems facing this country is by forming task forces and the results of these task forces are never known.

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is Prof. Mzee in order to say that the results of the task forces in this country are never known, when this House has debated Bills emanating from the task forces? I believe the hon. Member has made very good contributions to some of them.

Dr. Kituyi: On a point of information, Mr. Temporary Deputy Speaker, Sir. I wish to inform Prof. Mzee that notwithstanding the good intentions of the Attorney-General, the most substantive tasks on constitutional and legal reforms on land tenure, which were defeated at the Motion level because the Attorney-General promised action through task forces, remain unattended. In those cases, the task forces were an excuse for inaction and not a reason for action.

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is Dr. Kituyi in order to say that there were some task forces on land laws when I never appointed any task forces to review land laws?

Dr. Kituyi: I will reply to you during my contribution!

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. We are at a loss. Dr. Kituyi is saying that the Attorney-General had appointed task forces to review land laws and the Attorney-General is refuting that. Is it Dr. Kituyi or the Attorney-General who is misleading the House? Should whoever is misleading this House not be asked to withdraw?

The Temporary Deputy Speaker (Mr. Wetangula): Mr. Wako, did you appoint a task force to review land laws?

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, as the Attorney-General, I can give you the list of task forces that I have appointed.

Mr. Muite: How many have you appointed?

The Attorney-General (Mr. Wako): Ten of them.

Mr. Muite: How many have Bills here?

The Attorney-General (Mr. Wako): Four.

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, the Attorney-General has answered the question. He has said that out of ten task forces only four have been brought here as Bills. We need no debate. The Attorney-General has admitted that he has set-up 10 task forces and only four have resulted into Bills. That is less than 40 per cent and his performance leaves a lot to be desired.

The Attorney-General (Mr. Wako): On a point of information, Mr. Temporary Deputy Speaker, Sir. Four task forces have submitted their reports and legislation has been debated in this House. As I am talking now, I have three Bills submitted by the task forces. Others have submitted Bills although they have not yet finalised their tasks. So, really, we are talking in terms of seven out of ten.

Mr. Temporary Deputy Speaker, Sir, these task forces would have finalised their tasks by last year had it not been for the campaign which was mounted by the Members of the Opposition, at the time the task forces were appointed, that they were a public relations exercise. This made it difficult for the task forces to take off in view of the constraint of resources. So, we lost almost two years because of this campaign mainly by the Opposition Members. I am glad that, in spite of all those difficulties, we are now getting aid. In fact, the record of seven task forces is a very good record taking into account the difficulties we went through because of the campaigns by the Opposition Members - maybe Prof. Mzee was one of them - to frustrate the work of the task forces.

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, this Bill is as a result of the shortcomings of this Constitution; the fact that even the Government and the Attorney-General realised that this Constitution is not good for this country.

Mr. Temporary Deputy Speaker, Sir, this Constitution has got 127 Sections and has undergone over 30 amendments in the last 28 years. It has undergone more amendments and alterations than the American Constitution which has been there for 200 years. This is because all the 38 amendments with the exception of the last amendment made in 1992, that is the repeal of Section 2(a), were meant to make this country more autocratic; to strengthen the hands of one man; the Executive, and to diminish the power of this Parliament and the Judiciary so that we have "a

mini-god" for a President in this country with the power to give and the power to take. This is what happened.

Mr. Temporary Deputy Speaker, Sir, that is what changed this Constitution to something which is more oppressive to the people of this country than any other thing. So, the bringing of this Bill to this House is one way of buying time so that this man can complete his second term while exercising this autocratic power.

Mr. Temporary Deputy Speaker, Sir, this Bill will not bear any fruits until five years are over. Everybody will then agree with me. It will take two years, even with the amendment, to reduce the third year. It will take two years before the Commission completes its work. Then it will take 30 days for the President to hand over the recommendations. There is no time limit given to the Speaker of the House within which he is supposed to present the report to Parliament, except that it is said that he will be required to do so immediately. The term "immediately" is vague. It might mean six or seven months. We know of cases where people have resigned or died and instead of the Speaker calling for a by-election, he sits and waits until he gets instructions from "above".

Mr. Temporary Deputy Speaker, Sir, the same thing will happen with this Bill. Once the Commission completes its work, the Speaker is absolutely free to do what he wants because there is no time-frame within which he is supposed to appoint a select committee of 51 people. The Speaker of this House is nothing but an agent of President Moi. I have read it.

The Temporary Deputy Speaker (Mr. Wetangula): Prof. Mzee, you are now flouting the Standing Orders of this House!

Mr. Shikuku: Are you still honourable?

The Temporary Deputy Speaker (Mr. Wetangula): You must withdraw that!

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, I am confused, I do not know what I said that I should withdraw.

The Temporary Deputy Speaker (Mr. Wetangula): Prof. Mzee, if you are confused, then you have no business being on the Floor!

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, I have said many things. Could you guide me on what I have said that requires to be withdrawn? Sunkuli!

The Assistant Minister, Office of the President (Mr. Sunkuli): On a point of order, Mr. Temporary Deputy Speaker, Sir. Prof. Mzee is so confused that he is not even calling me hon. Sunkuli. Is he in order to discuss the conduct of Mr. Speaker, without a substantive Motion? Could he withdraw both the statement and his confusion?

Mr. Nthenge: And apologise!

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, who elected hon. ole Kaparo to this House? Hon. ole Kaparo is a nominated Member of Parliament and it is KANU which voted him in. We refused him three times here and he still became the Speaker.

Mr. Nthenge: On a point of order, Mr. Temporary Deputy Speaker, Sir. We are not discussing hon. ole Kaparo. You have heard Prof. Mzee drag the name of the Speaker here. Could he withdraw, apologise and confine himself to the Bill?

The Temporary Deputy Speaker (Mr. Wetangula): Order, hon. Mzee! Exhibiting emotions and discourtesy does not make this debate any better than it should be. If you want to discuss Mr. ole Kaparo, you should bring a substantive Motion under Standing Order No.73. We will allocate you time and you can pour as much scorn as you wish on him within the law. In so far as you have not done that, you must withdraw and apologise to the House.

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, I withdraw and apologise for the reference to the Speaker of the House. But my argument still stands.

Clause 16 (3) says:

"The Speaker of the National Assembly---"

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. After hon. Prof. Mzee had withdrawn, he turned round and said his argument stood; that is, his argument about the Speaker. Is he in order to do that? Should he not withdraw unconditionally and move on to say anything else which he wishes to say?

The Temporary Deputy Speaker (Mr. Wetangula): Mr. Munyasia, you are very right indeed. The withdrawal and apology was meant to be unconditional. Can we have that?

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, with all sincerity, I withdraw and apologise. When I said that my argument still stands, I was referring to Clause 16(3) which says:

"The Speaker of the National Assembly shall forthwith refer the report to the Select Committee of 51 Members of the National Assembly."

The expression "forthwith" has no time frame. It could be one year depending on the interpretation of his boss.

Mr. Shikuku: Jambo la nidhamu Bw. Naibu Spika wa Muda. Ni haki kwa mhe. Prof. Mzee kupotosha Bunge hili? Rais anatakiwa kupeana ripoti hiyo kwa Bw. Spika, kwa muda fulani. Na Bw. Spika anapopata hiyo ripoti, anaisukuma mara moja na siyo kwa mwaka moja! Je ana haki ya kupotosha Bunge hili na yeye ni Profesa mzima, na tena mheshimiwa?

The Temporary Deputy Speaker (Mr. Wetangula): Mr. Shikuku, it does appear that Prof. Mzee has got problems with the English Language.

(Laughter)

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, I do not have any problems with the English Language. Hon. Shikuku seems to trust these people very much indeed. You know how they react.

The Temporary Deputy Speaker (Mr. Wetangula): Prof. Mzee, what is wrong with you this afternoon? There is nobody here whom you can refer to as "these people". These are your hon. colleagues.

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, when I say "these people", I mean KANU in general. That includes hon. Members and the other members of the party. When I started my contribution, I declared that I do not have any trust in them at all. What is wrong with saying "these people?" I do not trust them because they should have said "within 48 hours." The Speaker might decide that forthwith means within six months.

Dr. Lwali-Oyondi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Surely, is it in order for hon. Prof. Mzee, who is my professional colleague to keep on misleading the House that the word forthwith has got any other meaning except "immediately?"

Prof. Mzee: What I have been saying is that one can say these things should be done immediately. To some people, that can mean even three months. I am talking and you ought to believe me now because it will be too late. The Members of IPPG trusted KANU when they were doing all these things.

Mr. Nthenge: On a point of order, Mr. Temporary Deputy Speaker, Sir. The HANSARD records will show that an hon. Member said that "forthwith" and "immediately" could mean waiting for three months and yet he is a scientist. Scientists believe in time more than anything else. Prof. Mzee is an expert in genetics and he knows that to conceive all sorts of things, time is very important. How can he say "immediately" and "forthwith" would mean even three months? Can he explain that or withdraw because that is below his professional standards?

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, I have fears and I have to express my fears. My fears are not unfounded because I have experienced this thing before. I have said that this document is buying time for the President to have another five years of autocratic rule in this country. The people of this country are tired. They want changes immediately. This corruption, harassment at the high---

Mr. Mulusya: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for hon. Prof. Mzee to mislead this House with his assumption that by the time this Commission will have completed its work, the person who will be in power will be President Moi?

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, before the IPPG sat down to discuss these things, I was very sure that, in 1997, President Moi would not be re-elected as the President of this country. But the IPPG ensured that he was going to be re-elected. The reason why President Moi accepted the IPPG proposals is because he told them they could discuss anything under the sky except his powers. That is exactly what the IPPG did. They discussed everything except President Moi's powers.

Mr. Shikuku: Jambo la nidhamu, Bw. Naibu Spika wa Muda. Je, ni haki kwa mhe. Prof. Mzee kusema kwamba wale waliohusika katika IPPG waliambiwa: "Endeleeni kusema, lakini msije mkafunga mikono yangu?"

Mr. Gitau: That is true!

Mr. Shikuku: Mhe. Ndicho hana habari kwamba kama mhe. Mbunge mwingine amesimama kwa jambo la nidhamu, ni lazima yeye anyamaze. Yafaa aelewe hiyo. Ni haki kwake kusema hivyo na hali----?

Mr. Gitau: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order, for hon. Shikuku to call me hon. Ndicho?

The Temporary Deputy Speaker (Mr. Wetangula): Order, Mr. Gitau! I know that you want to complain that you are not hon. Ndicho. We all know that.

Mr. Shikuku: Bw. Naibu Spika wa Muda, ni haki kwa mhe. Gitau kusema sisi hatukuweza kupunguza uwezo wa Rais? Yale tuliyoazungumzia ni yale yaliyokuwa katika zile resolutions za Limuru Convention. Je, ana haki ya kupotosha Bunge hili na Limuru Convention haikusema mhe. Rais Moi asifungwe mikono?

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, I do not want to discuss what has already been discussed by the Statute Law (Miscellaneous Repeals Amendment) Bill. If I were to reply---

The Temporary Deputy Speaker (Mr. Wetangula): Prof. Mzee, you will be very helpful to this Parliament

if you tell the Attorney-General what you want him to include in this Bill.

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, I am completely opposing this Bill. It belongs to the gutters and it should go there because it will serve no purpose to the people of this country. This is the reason why I am telling you that this Bill has got only one specific purpose and that is to buy time for President Moi to complete his second term with his autocratic power. That is all and nothing else.

(Loud consultations)

Mr. Temporary Deputy Speaker, Sir, could you, please, protect me from these colleagues of mine? I do not know what they have eaten. They must have eaten something very strong. They are attacking me more than the KANU Members of Parliament! What have they eaten?

Mr. Mulusya: On a point order, Mr. Temporary Deputy Speaker, Sir. Is it not in order for hon. Prof. Mzee to give an alternative view? What he wanted was to be given that opportunity. Can he now propose what he thinks is a better alternative other than calling us names?

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is Prof. Mzee, a well-known admirer of Sheikh Khalid Balala, in order to say that this side has "taken something hot"? Is he in order to impute this motive that we have "taken something hot" when we know that since he is a friend of Balala, he might be the one who has taken it?

The Temporary Deputy Speaker (Mr. Wetangula): Order! I honestly did not hear that. Prof. Mzee, did you say that?

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, I said that I have been interrupted more by my friends than by KANU. I do not know what they have eaten to be that active in interrupting and attacking me.

The Temporary Deputy Speaker (Mr. Wetangula): Order! You have said that they have "taken something hot."

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, let me explain to you. I do know that when hon. Members sat in the IPPG meetings, they were paid Kshs3,000 for a sitting. We know that was illegal because the committee was not a committee of Parliament.

The Temporary Deputy Speaker (Mr. Wetangula): Order! Prof. Mzee, it is obvious that for the last five years, you have not looked at the Standing Orders, the Speakers Handbook, and all the rules that govern this House, for you to make such an outrageous remark.

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, I would like to be told on the Floor of this House whether the hon. Members who sat on the IPPG meetings were not paid Kshs3,000 for every day sitting, knowing that the IPPG was not a Select Committee of this Parliament? It is a fact! Why should a person deny such a fact?

Mr. Mulusya: On a point of order, Mr. Temporary Deputy Speaker, Sir. The other day, we heard hon. Dr. Otieno-Kopiyo saying in the papers that those of us who sat in the IPPG talks were being paid Kshs30,000.00 per day. Now, hon. Prof. Mzee has reduced it to Kshs3,000.

An hon. Member: How much were you paid? Tell us the amount!

Mr. Mulusya: Mr. Temporary Deputy Speaker, Sir, when every Committee of this House sits outside the Parliamentary sitting days, every hon. Member is paid Kshs3,000 per sitting. When the Report of the IPPG was adopted by this Parliament unanimously, that Report became the property of this House. Therefore, the members of the committee, through the Sessional Committee, were supposed to be paid for the days they sat, outside the sittings of the House. The Committee sat for four days and all hon. Members were paid Kshs12,000.

Mr. Muite: Plus Kshs30,000!

Mr. Mulusya: Plus Kshs30,000.00 which hon. Paul Muite received from America!

(Laughter)

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, the truth is now coming out.

Mr. Busolo: On a point of order, Mr. Temporary Deputy Speaker, Sir. It is very interesting that hon. Prof. Mzee is talking about Kshs3,000 which hon. Members here were paid. That point has been well argued by hon. Mulusya. However, is it in order for an hon. Member, who belongs to the anti-reformist wing that received over Kshs300 million from foreign donors, to talk about Kshs3,000 which is being paid by taxpayers?

(Applause)

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, an illegality which is done in this House is a very serious thing. Hon. Members here are justifying the act of receiving Kshs3,000

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. Are you satisfied that these points being raised are truly points of order in accordance with the Standing Orders of this House; like the one raised by hon. Mulusya and hon. Busolo? Is it not in order for hon. Prof. Mzee to be protected by the Chair in order to make his contributions? He talked of Kshs3,000 only. If that is disputed, he can be called upon to substantiate. Is it in order also for the hon. Mulusya to say that the hon. Member for Kikuyu received Kshs30,000.00 from America, which is insulting? Can I, through you, ask hon. Mulusya to substantiate? Can hon. Busolo also be called upon to substantiate that Kshs300 million has been given to the Opposition?

Mr. Mulusya: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Wetangula): Order! Order! Can we now hear the contributions of hon. Prof. Mzee? I am satisfied, hon. Muite, that the points of order being raised were legitimate. They were in response to the remarks being made by the hon. Member on the Floor.

Mr. Mulusya: On a point of order, Mr. Temporary Deputy Speaker, Sir. With due respect to the Chair and this House, I am ready and prepared with documentary evidence to show and to prove to this House, for example, in 1991/92, how some hon. Members of this Parliament, including hon. Paul Muite, received money meant for the original FORD, and that money is still in their bank accounts to-date.

(Mr. Leshore stood up and clapped)

The Temporary Deputy Speaker (Mr. Wetangula): Hon. Leshore, if you stand up and clap again, I will show you the door!

Hon. Muite, it is you who demanded for a substantiation.

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Mulusya made a very categorical statement, that hon. Paul Muite received Kshs30,000.00 from America. Through you, I am asking the hon. Mulusya, and not any Member from that side of the House, to lay on this Table the evidence that I received Kshs30,000.00 from America. That is what he said. Repeating that wild allegation here is not a substantiation. Let him lay the evidence on the table.

The Temporary Deputy Speaker (Mr. Wetangula): Mr. Mulusya, do you have the evidence?

Mr. Mulusya: Mr. Temporary Deputy Speaker, Sir, what I am ready to bring here is not on the allegation of Kshs30,000.00, and it is not as recent as three weeks ago. I am talking about evidence for the year 1991/92, when we were clamouring for multipartyism.

An hon. Member: Bring that one!

The Temporary Deputy Speaker (Mr. Wetangula): Order! Whether any hon. Member received money or not is a matter of history. I do not want to hear any more of that. Prof. Mzee, carry on.

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, I will keep away from this topic, although I would like it to go on record, that when these committees met, they were not committees of this Parliament.

We have been told that the IPPG proposals have averted chaos---

The Minister of State, Office of the President (Mr. Biwott): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to mislead this House and the entire nation that the meetings of the Parliamentarians were not sanctioned by this House, while we know that the House met here, and by leave of the House, adjourned to deliberate on these issues, came back and passed a resolution authorising the tabling of those recommendations and directing the Attorney-General to prepare them into Bills which we are now deliberating on? Is he in order to mislead the House?

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, I would refer hon. Biwott to the HANSARD. When the Speaker used to be told that we want to do things in the spirit of the IPPG, he used to say: "I do not recognise that! I have never heard anything of that sort!"

The Assistant Minister, Office of the President (Mr. Sunkuli): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it not in order for you to direct hon. Prof. Mzee to state the correct facts? This is because it is in the rules of this House that whenever a specific number of hon. Members meet in a Committee during a time when the House is not sitting, those hon. Members become eligible for payment.

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, I would like to---

Mr. Achieng-Onoko: On a point of order, Mr. Temporary Deputy Speaker, Sir. I stand here as a former Co-Chairman of the IPPG, which has been abused, ridiculed and vilified as having received colossal sums of money, for their own benefit, to do what the President of the Republic of Kenya wants. I want to tell this House that the only

money that I received was Kshs10,500 for three sitting days, and not more. I have never been done a favour.

Therefore, some of these people, whose record I do know, or suspect, keep on claiming that we have received some money. These allegations and abuse should stop. Otherwise, we are going to work very hard to reveal some of the old events in which some of these people were involved.

(Applause)

The Minister of State, Office of the President (Mr. Biwott): On a point of order, Mr. Temporary Deputy Speaker, Sir. In view of the seriousness of the allegations that hon. Members on the other side of the House have been receiving money from foreigners and their constant clamour for civil disobedience, strife and violence, is it not incumbent upon them to disclose the amount of money that they have been given to destabilise this country? Also, in view of the fact that they are the ones who talk loudly about transparency and accountability---

The Temporary Deputy Speaker (Mr. Wetangula): What is your point of order?

The Minister of State, Office of the President (Mr. Biwott): My point of order is that Prof. Mzee and hon. Muite should disclose whether they have been given any money---

Mr. Muite: In fact, it is you who have stolen the Government's money!

The Minister of State, Office of the President (Mr. Biwott): I have not stolen anything, and this is well known! I challenge anybody to prove anything to the contrary! I have not taken any money! If there is any thief here, it is hon. Paul Muite and Prof. Mzee!

The Temporary Deputy Speaker (Mr. Wetangula): Order, hon. Biwott! First of all, hon. Biwott, the use of the word, "thief" is unparliamentary, and it also casts an improper motive on hon. Paul Muite. Will you withdraw and apologise to him?

The Minister of State, Office of the President (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, I withdraw that, but he asked for it! I gave him exactly what he wanted. He is a thief - I mean he talked about theft! So, the man who is an expert in thieving is the one who talks about it because it is his religion. But with these few remarks, I withdraw---

The Temporary Deputy Speaker (Mr. Wetangula): Order, hon. Biwott! The order is very simple. Just withdraw and apologise for calling hon. Muite a thief!

The Minister of State, Office of the President (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, as a matter of integrity, I withdraw and apologise. I hope that the hon. Member learns to grow up and talk like a grown-up person. He should disclose whether he has got any money to destabilise this country. We must not allow these issues to fade away. They should tell us whether they are being funded to defend NCEC. The hon. Member is very shattered---

The Temporary Deputy Speaker (Mr. Wetangula): Order! Carry on, Prof. Mzee! I will not allow anybody to interrupt you again!

Prof. Mzee: On another note, I cannot stand in this House and accuse a freedom fighter of hon. Achieng-Oneko's calibre of receiving money---

The Temporary Deputy Speaker (Mr. Wetangula): Order, Prof. Mzee! You said what you said and it is in the HANSARD. You said what you said about the NCEC and there is nothing to apologise about. Can you carry on with your debate or give room to somebody else?

Prof. Mzee: I would like to continue, but before I do so, I would like to tell hon. Achieng-Oneko, who is a very good friend of mine---

The Temporary Deputy Speaker (Mr. Wetangula): Order, Prof. Mzee! I do not want you to escalate this personal debate! Either debate on the Bill, or I will give the Floor to another hon. Member!

An hon. Member: Usipayuke! Sema maneno!

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, hon. Achieng-Oneko has never received money illegally from anybody. The question that I put forward concerned the money which was paid as sitting allowance by the Clerk of the National Assembly to the Members of IPPG and yet they were not a Committee of this House. The payment was not authorised by anybody and the Accounting Officer will have to answer for it to the Controller and Auditor-General when the right time comes. I would like that matter to rest at that point. If I did anything that upset hon. Achieng-Oneko, I apologise to him only. He has done a lot to bring Uhuru to this country. I have also never accused hon. Shikuku for anything. He is a very clean man. I have never mentioned about *ugali* or anything of that sort! Did I? So, it has been said that the IPPG---

Mr. Mulusya: On a point of order, Mr. Temporary Deputy Speaker, Sir. Since Prof. Mzee seems to have ran out of ideas on this Bill, is it not in order for the Chair to kindly ask him to sit down, and give somebody else the

chance?

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, I have never heard anything of that sort. I have not even contributed to the Bill! I have not even started! How can he ask me to sit down while I have not even started?

The Temporary Deputy Speaker (Mr. Wetangula): Order, Prof. Mzee! I am at a loss as to where you are finding *ugali* in any Clause in this Bill. Can you debate the Bill?

Prof. Mzee: We were told that the IPPG has done a good job of averting chaos in this country. I would like the people of this country to know that when it comes to a choice between righteousness and peace, I will always choose righteousness. This is because peace is a temporary thing. I think averting chaos for a temporary period of time, and creating a time bomb which will explode later on, is something we should have guarded ourselves against.

All Kenyans will ask us what the IPPG has discussed and agreed on and what changes it has brought to the people.

Dr. Kituyi: On a point of information, Mr. Temporary Deputy Speaker, Sir. I can understand the causes of the anxiety of my colleague and friend, Prof. Mzee. But I wish to inform him that the concrete substance of negotiation on reform was on minimum packages; that is, hat statutory and minimal constitutional reforms. This Bill is about the establishment of a Commission to look at the comprehensive reforms, it is not part of minimum reform. So, can he separate the content of the minimum reforms Bill from a Bill setting up the Commission for future comprehensive review of the Constitution?

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, I am not confused. I know exactly what I am talking about. I am saying that whatever we do in this House will reflect to the people who pushed this Government to agree to sit down in the first place to talk. This Government was absolutely unwilling to talk. It is the National Convention Executive Council (NCEC) which came up and pushed the President to the wall.

Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Prof. Mzee to mislead this House when he refers to the NCEC? Does he know what it means? The NCEC comprised of FORD(A), DP, FORD(K) and all the churches. Is he in order to say that it is them who initiated the talks? It is no secret that he never even went to Kamukunji or Uhuru Park for the reforms meetings. So, it is us who brought reforms, and not the NCEC. We are the NCEC! It is an umbrella body which has folded up and shall remain so folded up for ever.

(Laughter)

Mr. Achieng-Oneko: On a point of order, Mr. Temporary Deputy Speaker, Sir. The point is this: It is not the Government which was pushed against the wall. It is we in FORD(K) who decided to ask hon. Wamalwa to see the President and talk to him, because we sensed that danger was evident. We wanted to have a dialogue with all--

The Temporary Deputy Speaker (Mr. Wetangula): That is a point of information, not a point of order.

Mr. Achieng-Oneko: Mr. Temporary Deputy Speaker, Sir, it is a point of information. So it was not a question of somebody being pushed against the wall. The talks were initiated by the Opposition, and hon. Wamalwa, in his capacity as the Leader of the Opposition, had just to do that. We advised him to do that. I am very happy that I was a party to that process.

(Applause)

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, I am a loyal member of FORD(K) and loyal to my party Chairman, hon. Wamalwa. But here we are discussing about important matters which go even beyond party issues. It is a question of principles and of what is right and wrong. A person is required for once in his life to stand for what is right. What is right is: We are being forced to pass this Bill, which is the same Bill that this side of the House at one time opposed here. We almost broke the Mace to make sure that this Bill was never tabled here. I do not know what happened thereafter to make the very same people change their minds.

Mr. Munyasia: On a point of information, Mr. Temporary Deputy Speaker, Sir. I beg to inform my friend, hon. Prof. Mzee, that there is a difference between the blue Bill that he has, which we had rejected at one time, and the one before the House now. If he looks at today's Order Paper, he will notice that it contains many clauses that have been introduced to the Bill as a result of the discussions in the IPPG. They are meant to improve upon this particular Bill.

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, the essence of this Bill, the author of which is none other than the Attorney-General is, and I still maintain, to buy time for KANU and President Moi to rule under this autocratic Constitution which makes him a "mini-God".

Mr. Temporary Deputy Speaker, Sir, when the Attorney-General was moving the Bill, he talked about the ethnicity and tribalism tearing apart the nations of Africa and, in particular, this country. I would like to refute that allegation and say that it is autocracy and this Constitution, which gives too much power to one man, which have torn apart this nation, and not tribalism. I have been a university professor for 15 years, and I would like to inform the House that before 1990, people divided themselves into tribes. On arrival, every new student, was informed of the tribal associations that existed then, such as the Kikuyu Association and Luo Students Association, for him to join.

But around 1985-1987, during my time as a student, I could not tell where particular students came from or which tribe they belonged to. Tribalism had "died" at the university. But it has been revived since 1992 by speeches made in public gatherings. Tribalism had become a thing of the past in Kenya, but it has now been revived. It is aroused in this country to divide and rule the people. It is KANU which is playing very---

The Assistant Minister, Office of the President (Mr. Sunkuli): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. Prof. Mzee in order to say that it is KANU which promoted tribalism in 1992, when he knows that the political parties which were formed in 1991/92 were tribally-based, but KANU remained all-encompassing? It has all the 42 Kenyan tribes in it.

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, it is okay for this Government to make suggestions, but implementing those suggestions is an impossibility. It is easy to say: "We are prepared to do a, b, c and d," but implementing these things is impossible and we have experienced it. It was none other than the Vice-President and Minister for Planning and National Development himself who stood up here and assured us that nobody would interrupt or cancel meetings, or beat up anybody attending a meeting. But on the 10th October, 1997, when some Opposition members tried to hold their meeting in a completely different area, at Kamukunji grounds when President Moi had his meeting at Uhuru Park, they were dispersed. Why should we not be allowed to hold our meetings? If Kenya is truly a democratic country, we should be allowed to compete with KANU. I am sure that if we were allowed to compete freely with KANU, nobody would have gone to Uhuru Park. Everybody would have gone to Kamukunji grounds.

An hon. Member: Endelea!

The Assistant Minister, Office of the Vice-President and Ministry of Planning and National Development (Dr. Misoi): Is it in order for hon. Member of Parliament for Kisauni to mislead this House that the NCEC held their meeting in a completely different place yet it was in Nairobi? Which Nairobi was that?

Pro. Mzee: Mr. Temporary Deputy Speaker, Sir, Nairobi Province, like any other province, is big. You cannot cancel all other meetings licensed to be held in different parts of Nairobi just because KANU also has a meeting within Nairobi. People were beaten up just six hours after Prof. Saitoti's assurance that nobody would be beaten up. We have hon. Members here with scars on their backs and chests. If you want me to table these people, I can do so and show you the scars inflicted on them by the police. They are here with me.

The Temporary Deputy Speaker (Mr. Wetangula): Order, Prof. Mzee! You will continue tomorrow at 2.30 p.m. But there is no Standing Order under which you can table people here.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Wetangula): Hon. Members, we now adjourn until tomorrow, Wednesday, 15th October, 1997, at 9.00 a.m.

The House rose at 6.30 p.m.